

MAY 19, 2005

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May 19, 2005

LB 312A, 348

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Ramon Janssen, from District 15. Senator Janssen.

SENATOR JANSSEN: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Janssen, for doing that for us. We appreciate it. I call the eighty-first day of the Ninety-Ninth Legislature, First Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

SENATOR CUDABACK: Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CUDABACK: Any messages, reports, or announcements?

CLERK: I have neither messages, reports, nor announcements at this time, Mr. President.

SENATOR CUDABACK: We now go to Select File, appropriations bill, LB 312A.

CLERK: Senator Flood, I have no amendments to LB 312A.

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 312A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 312A to E & R for engrossing. All in favor of the motion say aye. Opposed to the motion say nay. LB 312A is advanced. Mr. Clerk, we now go to General File, 2005 committee second priority bills, LB 348.

CLERK: LB 348, Mr. President, a bill by Senator Bourne. (Read

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title.) Introduced on January 11, referred to the Judiciary Committee. The bill was advanced to General File. I do have committee amendments pending, Mr. President. (AM1332, Legislative Journal page 1315.)

SENATOR CUDABACK: Senator Bourne, you're recognized to open on LB 348.

SENATOR BOURNE: Thank you, Mr. President, members. LB 348 would give the Supreme Court the ability to periodically change the bill of exceptions fee without having to amend the statute each time the court changes the fee. The current bill of exceptions fee is \$2.75 per page for the original copy, and 50 cents per page for each additional copy. In the district court, the court reporters receive the bill of exceptions fee, in addition to their base salary. In county court, the bill of exception fee is remitted to the general fund. This bill would remove any statutory reference to a specific dollar amount, and allow the Supreme Court to establish that amount outside of statute. That is what LB 348 does, Mr. President.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on LB 348. There are committee amendments. Senator Bourne, you're recognized to open on the committee amendments, as Chairman of the committee.

SENATOR BOURNE: Thank you, Mr. President, members. As the Judiciary Committee does from time to time, we incorporate a number of bills into a particular measure. The committee designated LB 348 as one of its priority bills, and then, subsequent to that, we found that there was support for several other measures. And lest I give the body the impression that I was the one who put together this fee packages and the judges' salaries and that, to be honest, the heavy lifting was done by Senator Brashear and his staff and the Judiciary Committee staff. But with that, I would yield the remainder of my opening to Senator Brashear, to discuss the various measures that are in the committee amendment.

SENATOR CUDABACK: Senator Brashear, you're recognized.

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SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. Good morning. Thank you, Senator Bourne. I appreciate your work and the work of the Judiciary Committee staff. I rise in support of the committee amendment which adds three important bills to LB 348. As Senator Bourne has described, the amendment will provide for an increase in judicial salaries, a comprehensive revision of filing fees in the judicial process, in order to provide funds for the judges retirement system, and a revision of archaic law regarding notaries public, so as to eliminate powers that are no longer appropriate or justified for notaries public. The increase in judicial salaries is a very important matter to be addressed this year. At the outset, I want to stress the importance, as you all know, of an independent, well-qualified judiciary. The independence of the judiciary is enhanced when compensation does not become a political issue but is provided as a matter of recognition of the importance of a coequal branch of government. The judiciary ought not need, I would respectfully submit, to feel as though it has to come to us with hat in hand, in order to be paid. And clearly, our ability to attract people of talent and accomplishment to the bench will depend on our ability to provide adequate and appropriate compensation. AM1332 will recognize the value of our judges and the justice of providing them with an increase in compensation. It is important to point out that during the prior budget cycle, during which, you may recall, things were somewhat tight, the judicial branch opted to forego salary increases. I would note that AM1332 will not, I repeat not, nor should it--I'm not suggesting it should--make up for that forbearance by the judiciary. That was their decision; that was done. But this bill will increase the percentage of...compensation by the percentage that has been provided to other state employees. That would be an increase of 3 percent in the first year, and an increase in the second fiscal year of 3.25 percent. The best way to assess the impact of AM1332 is to examine where Nebraska judges rank nationally. In national terms, Nebraska judges are, in fact, below the median salary for state judges, currently ranking 29th among the states. Even with AM1332, Nebraska salaries would remain below the median salary, and the median is expected to increase, as other states adopt salary adjustments. Clearly, this bill is therefore, we would respectfully submit, not overly generous, when we compare

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what our judges are paid, compared with other states. We have recognized our constitutional executive officers with salary increases, and we respectfully suggest that it is time now to recognize the officers of our judicial branch. The second key part of AM1332 are changes intended to address an ongoing actuarial deficit in the judges retirement fund, and I want to acknowledge and appreciate Senator Stuhr's work with this, as Chair of the Retirement Committee, and her staff. The amendment incorporates provisions derived from LB 643, which I introduced in order to address this problem. These provisions both reform and harmonize our many provisions relating to court fees, and provide a revenue source to ensure solvency of the judges retirement fund. As one can see from the amendment, our statutory provisions regarding court fees are spread across a variety of sections, and have not heretofore been organized pursuant to an overall plan. The result of this is that the total amount of court costs in most matters ends in 50 cents. We ask why. This has resulted in some administrative issues for the court system, including the need to constantly make change and provide refunds of 50 cents to those who pay more. This issue, together with the notion that it was an appropriate time to consider modest increases in most fees, provoked the Office of Court Administrator to develop a plan for reforming, harmonizing, and increasing the fee structure. It was also determined that the revenue derived from such fees would increase an appropriate...pardon me, would provide an appropriate source of revenue to fund the ongoing actuarial deficits in the retirement fund. We must stress that, as Senator Stuhr has told us and would tell us, these deficits must be made up by the state. It is in anticipation of LB 348 and AM1332 that our budget this year did not provide the revenue for adjusting or paying these existing deficits. So this bill is a necessary part of our ongoing budgetary process. There is also an anticipated ongoing deficit in the judges retirement fund, so the source of funds provided in this amendment will be utilized on an ongoing basis, just to provide the level of benefits to which the state has already agreed that it will provide our judges. My understanding is that the Retirement Systems Committee has determined that, based on current collection trends and the adoption of AM1332, the system will come into balance within a three-year period. Therefore, the bill will

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neither raise too much, nor raise too little, with respect to addressing the retirement issue. In addition, the fees that are earmarked for civil legal services and indigent criminal defense will be expanded and increased, in order to provide additional funding for those important services to our citizens. The handout I have provided sets forth all of the various fee increases and the use of the funds generated by those increases. The final piece of this amendment would amend an outdated statute relating to the power of notaries. This is a bill brought by Senator Chambers, and one in which I have supported him. I strongly endorse the elimination of these powers. They came to Senator Chambers' attention when a couple in Nebraska was actually being unjustly pursued and, as he often is, he was called, and we are addressing this issue, and I enthusiastically recommend eliminating this. I've worked in the area of notaries public previously, and happy to support that effort. With that, Mr. President, I would conclude my remarks. I think it's appropriate to return the time to Senator Bourne. I thank him again for his courtesies, and I thank you all for your attention.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Bourne, there's about a minute, 30 left, if you care to...

SENATOR BOURNE: Thank you, Mr. President, members. I appreciate all the work that Senator Brashear has done on this. It's a situation where the retirement shortfall is such that we have to, have to do this, I feel. I appreciate all the work that's gone into this. With that, I would conclude. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. (Doctor of the day introduced.) Mr. Clerk, a motion.

CLERK: Senator Bourne would move to amend the committee amendments with AM1355, Mr. President. (Legislative Journal page 1338.)

SENATOR CUDABACK: Senator Bourne, you're recognized to open on AM1355 to the Judiciary Committee amendments, AM1332.

SENATOR BOURNE: Thank you, Mr. President, members. I made a

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math error, and I want to thank Howard Kensinger from the Fiscal Analyst Office for catching it. Basically, it corrects a miscalculation in the judges' salaries. The salary in the committee amendment read \$123,152, and the correct amount was \$126,846. And again, I want to thank Howard for catching that error. With that, I'd urge your adoption of AM1355.

SENATOR CUDABACK: You've heard the opening on AM1355. Open for discussion. Senator Stuhr, followed by Senators Chambers, and Synowiecki. Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. I stand in support of the committee amendment, and also the amendment that we have before us, and I wanted to just speak a little bit about the court fee increase, which is included in the committee amendment. Based upon the latest actuarial report from the judges retirement system, there is a required actuary contribution requirement of \$644,562. Based upon projections by the actuary, this amount is anticipated to increase over the next few years, with \$857,748 being projected for 2006-2007 fiscal year. Because this court fee increase is spread out over a number of different court filings, the projected increase to the judges retirement system will be approximately \$800,000. This amount will help to blunt the impact from future required actuary contributions that presumably would be paid out of General Fund dollars. Finally, because the judges retirement system is a defined benefit plan, the state is required to fund any actuarial contribution requirement, unless a change is made to the structure of the plan, such as an additional contribution or rate increase. At least in the short term, this rate increase will help to fulfill this requirement. I, too, want to express my thanks to Senator Brashear and Senator Bourne for working on this issue. I also am in support of the salary increase as drafted in the committee amendment. I do believe that we are looking at an increase, as Senator Brashear stated, that coincides with what state employees are receiving, 3 percent the first year, 3.25 percent for the second year. So thank you, and again, thanks for all of those that have worked on this issue, and I give the rest of my time back to the Chair.

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SENATOR CUDABACK: Thank you, Senator Stuhr. On with discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, a lot of work has been done on this bill. I support the bill. I support the amendments, and I came to this position by a long, tortuous, rocky road. I deem myself to be the gatekeeper when it comes to increases in court fees. I have done, during my entire time in the Legislature, all that I could to prevent what I call cash register justice from taking place; namely, supporting the judicial system by way of court fees. It is not a user system. The court system is created by the constitution. The judiciary is the third branch of the three-branch government in this state, and I believe that fees ought not be used to take the place of General Fund appropriations. The courts should be supported through the taxes paid by everybody. However, despite my strenuous opposition to unnecessary increases in court costs, especially...or fees...to fund what I think the General Fund should pay for, I can be shown that a situation has come into being which needs a remedy, and the remedy will probably have to be an increase in various fees. So I met with the Chief Justice, I've talked to Senator Brashear, I've talked to Senator Bourne, and I decided that I would agree to these increases, and when I make an agreement such as this, I will not back away from it. It's very distasteful to me. Another thing I need to comment on, but I think I may wait until I'm recognized, so I'll have enough time to complete that, but a disturbing thing happened that relates to the Legislature itself, and it has become public, so I've got to comment on it. The Chairman of the Executive Board, pursuant to a request from a lobbyist, requested a letter from the Attorney General, an Opinion, as to whether or not this man Hergert could be impeached for conduct preceding his entry into office. First of all, due to, I guess, an overabundance of accommodating, that letter was sent. It was not sent by Senator Engel, as the representative of the Executive Board. The Executive Board was not consulted. I think it was a mistake. The issue is not ripe for an Opinion from the Attorney General. The committee has not voted to send the resolution out here, and even after that has been done, the Legislature must vote to adopt the resolution. So, until that is done, nothing exists in the way of formal action for the

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Attorney General to comment on, even if he chose to. But getting into the middle of an issue which is before the Legislature, as this one is, is totally inappropriate. And the reason I think the letter was so inappropriate, the Chairman sits on the committee. These are hard things. They need to be said by somebody. I have to do the heavy lifting, and I will do it, because I respect the institution of the Legislature. Its integrity must be upheld. I'm not accusing Senator Engel of doing something wicked. I'm saying a mistake was made. When this man Hergert has a case pending before our board, it is inappropriate for the chief judge to take an action...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...that could be perceived as being done on behalf of the man whose case we're going to consider, when the request is made pursuant to a lobbyist's request. These lobbyists need to understand when they've stepped over a line. But they're going to get anything out of this Legislature that they can. We are going to have to protect ourselves and maintain our integrity as an institution. Now, this kind of presentation is what makes me the prince of darkness, meaning the evil one. But I will be that evil one as long as I'm in this Legislature. The lobbyists, the Attorney General, Senator Engel, Hergert, and all the others will understand that when I think a line has been crossed inappropriately and it becomes a matter of public knowledge, I am going to speak on behalf of the Legislature.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. Senator Bourne, could I ask you a couple of questions in your capacity as Chairman of this committee?

SENATOR BOURNE: Certainly.

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SENATOR SYNOWIECKI: Senator Bourne, relative to the judges' salary increases, that was an individual bill; was it not?

SENATOR BOURNE: Yes, Senator Synowiecki, it was. It was LB 540, introduced by Senator Brashear.

SENATOR SYNOWIECKI: And what was the original amount, relative to increase, in the green copy of the bill? Do you have that, by chance?

SENATOR BOURNE: I believe it was 5 percent in the first year...let's see, 4 percent in the first year, and 5.25 in the second year.

SENATOR SYNOWIECKI: And the committee, then, essentially reduced that to echo or to correspond what the state workers receive?

SENATOR BOURNE: That's correct; 3 percent in the first year, and 3.25 in the second.

SENATOR SYNOWIECKI: Now, Senator Bourne, in the analysis of...in the committee's approach to this, was the judges' retirement benefits at all brought into the equation? I guess what I'm trying to get to is, was there an analysis done, a comparison, of the judges' retirement as it relates to state workers' retirement plans and so forth?

SENATOR BOURNE: If you're asking did we make a decision in the committee amendment to make their salaries 3 and 3.25 percent increases, compared to the state workers, or are you asking about the contribution of the judges to their retirement plan?

SENATOR SYNOWIECKI: Relative to the benefit. I guess what I'm trying to get at is, was the compensation of the court, in comparing and contrasting to the compensation of state workers, was it looked at, the compensation universally, which would include retirement benefits, or was it singularly, relative to salary only?

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SENATOR BOURNE: Oh, that's a good question. I don't recall us ever looking at their salary increase relative to their retirement, or vice versa. What we simply did was we, in the committee amendment, we put in the percent increase for the judges that the state employees got, and we didn't look at what, you know...that percent increase versus what their retirement benefits are.

SENATOR SYNOWIECKI: Okay, thank you, Senator Bourne. You know, just so members are understanding, and Senator Stuhr talked earlier but didn't allude to much of this, our state judges--district court judges, county court judges, Supreme Court judges--are on a...what we call a defined benefit plan, relative to retirement benefits. And if you're a district court judge in the state of Nebraska, you're currently earning approximately \$110,000 a year; a county court judge is 3 percent behind that salary scale, and upon retirement, with full vestiture--in other words, if you're fully vested--you have a retirement benefit that is in excess of \$70,000 a year. And when Senator Brashear speaks of the criteria of our judges or where they're at relative to studies in other courts, or in other states, I doubt if--and I don't know, and perhaps he can speak to this--is whether or not judges' compensation in them studies evaluate or incorporate the retirement component. And while it is true the judges did not receive a salary increase last budget cycle, two years ago, they did, however, indeed, receive an enhancement to their retirement package. They received a...quite a lucrative arrangement relative to the retirement, in terms of a survivor benefit, which harkens back...

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: ...now we're raising court fees on individuals that are coming to court, to help offset, if you will, the addition that we did to the retirement benefit just two years ago. I'm not necessarily against this. I'm...obviously, everyone wants an effective judiciary. However, I don't think we're at critical mass, where we're not attracting accomplished attorneys' application to become judges. I know the district court bench in Douglas County had a vacancy

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recently. I know the district court bench in Sarpy County had a vacancy very recently, and they attracted a lot of applicants, very accomplished attorneys, so I don't think we're at that critical mass yet, where we are losing individuals' interest in applying to become judges in the state of Nebraska. The judges are very...they're handsomely paid compared to other state workers. Compared to other constitutional officers, they

SENATOR CUDABACK: Time, Senator Synowiecki.

SENATOR SYNOWIECKI: ...receive a retirement benefit that I wish I could sign up for, you know, \$70,000...

SENATOR CUDABACK: Time, Senator.

SENATOR SYNOWIECKI: Excuse me, Senator?

SENATOR CUDABACK: I said time, Senator.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you. Senator Bourne, followed by Senator Chambers. Senator Bourne waives his opportunity. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I must utter another discouraging word which relates to the judiciary. In Douglas County, you have a rogue court, peopled by rogue judges, who feel accountable to and responsible to nobody other than me. You know why I say it on the mike? Because they know that it's true, and they'll listen to me when they won't listen to anybody else. What these scoundrels decided to do is, whenever an indigent defendant is represented by a court-appointed lawyer, instead of those lawyers being paid a measly \$50 an hour for however many hours are necessary to represent the person, the Douglas County court judges wanted to impose a flat \$100 fee for all the work, whether it's a traffic case or a murder case, which means that you're going to get the most inept, incompetent people. The only reason the judges did that was that they said it would save \$10,000 on their budget. Whenever a court system seeks to balance its budget by

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interfering with the proper providing of effective counsel, that system has lost its way and is unworthy to be called a court. The duty of the court is to dispense justice, and what these lazy rascals...they a lot of times don't show up for work on time, they leave early, they are rude--not every one of them--they are crass, they are partial, they are discriminatory, they are insulting, because they can get away with it. By saying that they can save \$10,000 is really an insult. I'm not going to let them balance their budget by crippling the system, so I talked to a World-Herald reporter who got the word to the judges on that court that I'm going to stop any salary increase for the judges. It's a shame on the face of the judiciary to have something like this done, because it goes backwards. Even southern states have been condemned for doing things similar to this. All that lawyers have to sell is their time, so these accused persons will not be given adequate representation. And if the judges felt that they should cut this money off, then they were not going to get a salary increase. That's it. And I made it clear that the hand that controls the purse strings is the hand that controls, and that I will stop them from getting a salary increase. Well, prior to my entry into the fray, various lawyers had spoken against it. Other people outside the system, I guess, had spoken against it. And the judges imposed it anyway. When I made clear what my purpose was, you know what happened? They stopped on a dime. They spun around. They reversed their course, and repealed that stupid enactment. I have to take a hard-nosed hammer approach. There has got to be a hammer. And when it comes to dealing with judges, and other misbehaving public officials, when all that I'm equipped with is a hammer, every one of these problems appears to me as a nail. And the purpose of a hammer is to hit the head of that nail, which I will do. Since that happened, the Chief Justice has taken an interest, and I believe that the problem that arose that time is not going to arise again. These are not things that I should have to do. You all don't do it. It's not...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...a part of my job description. So why do I do it? Because I have a higher standard of what I'm required to do. So when you all sit around here on these bills and you get

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mad because I fight them, I'm fighting other things, too, that you all don't even know are happening, that you don't care about, and if you become aware of them, you don't care enough to do anything about it. So don't anybody presume to tell me how to do my job as a member of this Legislature. And I want to give you all some warnings. The Speaker has put a lot of bills on the agenda that I disagree with. I'm going to fight them harder on Select than I did on General, so don't think that because of some things that were addressed toward me and the way I operate, when we were talking about LB 500, that I am in any way deterred or that I'll be a milquetoast like some of these senators in the U.S. Senate, trying to compromise with Senator Landis or anybody else who's upset with my approach. They don't change theirs because of how I feel. They'll keep bringing these bad bills; they'll keep carrying water for the big business interests.

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: Let them stop doing what they're doing, and I'll stop doing what I'm doing.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: I'm going to turn on my light one more time.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Friend, followed by Senator Synowiecki. Senator Friend waives his opportunity. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. Senator Stuhr, would you yield, as Chair of the Retirement Committee?

SENATOR CUDABACK: Senator Stuhr, would you yield?

SENATOR STUHR: Yes.

SENATOR SYNOWIECKI: Senator Stuhr, Senator Brashear very correctly indicated that the judiciary did indeed not receive a benefit in terms of salary the last budget cycle, but could you

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speak to, perhaps, what they did receive, relative to enhancements in their retirement package?

SENATOR STUHR: Yes. Let me just refresh our memories that current members had a one-time election to increase their rate of contribution from 6 percent to 8 percent, if they had service under 20 years, and from zero--they were contributing nothing--to 4 percent, if they were serving over 20 years. Then those members could...elected this contribution increase...those that elected to have the increase, then, were entitled to the new benefit of a 50 percent joint survival annuity. And all of the new hires, all of the new judges, will not have that choice. They will automatically come in at that higher rate. Does that help define...

SENATOR SYNOWIECKI: Yeah, thank you, Senator Stuhr. Senator Stuhr, we have two defined benefit plans, and it's for the judges, in terms of state workers, judges and State Patrol. Now the school employees retirement system is defined benefit, but they're not under the state dime, if you will. Isn't that correct, Senator Stuhr?

SENATOR STUHR: Well, there's some requirement, but actually the local schools make the larger, largest...

SENATOR SYNOWIECKI: Right.

SENATOR STUHR: ...employer contribution.

SENATOR SYNOWIECKI: Okay. For the two that we have most control over, would you agree we have most control over the judges and the State Patrol system,...

SENATOR STUHR: Yes.

SENATOR SYNOWIECKI: Senator Stuhr?

SENATOR STUHR: Yes.

SENATOR SYNOWIECKI: As a percent of pay, in terms of contribution to the plan, the State Patrol system is, as I

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understand it, almost 30 percent, is that correct, 29.66 percent, while the judges, as percent of pay for benefit, is 22.36 percent.

SENATOR STUHR: That's correct, when you add everything together, yes.

SENATOR SYNOWIECKI: Now the benefit of the judges' program, or retirement system, there's been, ever since I've served on the Retirement Committee under your leadership, there's been structural problems with that plan, hasn't there?

SENATOR STUHR: Yes, we...there have been lawsuits because one year we asked for an increase in contribution without giving a corresponding increase in benefits, and I'd almost like to have that written in stone that we do not give increase benefits without asking for an increased contribution rate.

SENATOR SYNOWIECKI: And as...what is occurring here under LB 348 is we're not requesting that the judges participate monetarily in assisting with their own retirement program, so we're off-loading this to our citizens that go in and pay court fees, under LB 348? The judges aren't participating in the bailout this time, is I guess what I'm trying to get to.

SENATOR STUHR: Well, all...as I stated, all new judges do have to come under the higher contribution rate now. So...and they have the option of either taking the increased benefit and paying the higher contribution rate, or not participating.

SENATOR SYNOWIECKI: But in terms of the current deficiencies within the judges retirement system, we have...we have a structural deficiency.

SENATOR CUDABACK: One minute.

SENATOR STUHR: Yes, we do, and...

SENATOR SYNOWIECKI: And LB 348 gives the judges a pass this time, in terms of them stepping up to the plate to help fortify their own retirement program. Isn't that, in essence, what

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we're doing here?

SENATOR STUHR: I...yes, they are not...they are not contributing an additional amount.

SENATOR SYNOWIECKI: So they're not...they have a retirement program where, as I indicated, you're fully vested if you're a district court judge. You earn in excess...well, not earn, you receive in excess of \$70,000 a year retirement benefit. But under LB 348, we're not requesting any additional contributions from the judiciary to help fortify that plan. Is that right?

SENATOR STUHR: That's correct, because we have always in the past looked at court fees to make up that retirement need, so...

SENATOR SYNOWIECKI: Okay, thank you, Senator Stuhr.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator Erdman, on AM1355 to the committee amendments.

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature, and I had followed Senator Synowiecki's comments as he was discussing with Senator Stuhr, a member of the Retirement Committee, and I think there are some obvious realities of the situation that Senator Synowiecki has pointed out. I do have some concerns about the underlying amendment, but I recognize that we're probably not going to go a different direction, and we do have a problem to solve. I think the money that is being appropriated or is being earmarked for the retirement is important for us to do, to ensure that the retirement system is actuarially sound at this point. But I do think that Senator Synowiecki brings up some valid points. The thing that I shared with the Speaker was...he mentioned that the members, the judges, shouldn't have to come to the Legislature with a hat in hand, to ask for a salary increase. As a member of the Retirement Committee, I have never seen the judges come to the Retirement Committee with their hat in their hand. Generally what they do is, they leave the committee telling us what we will and will not do, what we will or will not allow. And so it's been an interesting discussion to learn the process of what the laws require in retirement and different areas, but I do

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think Senator Synowiecki has brought some valid concerns that the Retirement Committee is continuing to work on. I think, you know, it's appropriate to go forward with what's in the committee amendment. I have some concerns about the total idea, but at this point, I don't know that we have a whole lot of other options that are presented to us to solve the problem, but I do think that it would be appropriate for the Retirement Committee to continue to work on this issue, similar to what Senator Synowiecki is bringing to our attention. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. On with discussion of AM1355. Senator Chambers, and as you know, it's your third time.

SENATOR CHAMBERS: Yes. Mr. President, members of the Legislature, to wrap this up, what I was talking about, I think there's a responsibility that the state has, whether we like it or not. They're given this benefit program, which says that a certain amount is going to be made available, and we have to put whatever money is necessary to fund it. But others are going to go into more depth about that. I became convinced of the necessity for doing this, and that's why I agreed, against all of my better instincts, Senator Synowiecki, to agree to these increases in the fees. Any program is subject to criticism, and criticism is valid. That is how attention is called to a program. That is the public scrutiny and oversight that every program funded by public money should be subjected to. So I don't have any quarrel with Senator Synowiecki criticizing or raising his views, I meant, his questions. I have not raised various issues that ordinarily I would bring up on a bill such as this, because I've become convinced that it's necessary, so I'm not going to try to alter the amount of the salary increase. I have not tried to lower any of the fee increases or do any of that, because a lot of work went into a delicately balanced bill. And I'm going to support it, as I've stated. But to get back to some of the problems that we have with judges. They are merely men and women like the rest of us. They wear robes. Sometimes I refer to them as gowns. But that robe is not to be designed to hide and conceal inappropriate conduct by judges. Not everything that a judge does which is inappropriate rises to

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a level of the violation of the ethics contained in the Code of Judicial Conduct. But when this kind of action is engaged in, it ought to be publicly criticized. Judges are held to a higher standard than lawyers and everybody else in this society. Judges seek those positions avidly, and they hold on to them as tightly as they can, even when they have committed some egregious violations. So I have decided that somebody needs to keep an eye on them and try to bring a degree of accountability into the judicial system. One person cannot do it all. Chief Justice Hendry has taken a much more acceptable approach to this than had been the case in the past. There are one or two things that I'm debating whether I want to put into the record, but there's one for sure that I want to emphasize. I do help people file complaints, if they have one. But I explain, there's a difference between being upset with a judge, and even offended, because of a decision handed down, with which a person disagrees. The Supreme Court, district courts, county courts, have handed down decisions that I violently disagree with. I don't mean through the use of violence. But those kind of matters, if they involve a lower court, are to be rectified through the appeals process. The time I will get involved and file a complaint in connection with a decision handed down by a court, if in the process of handling that case, inappropriate things are said which are ethnical violations, or inappropriate conduct is engaged in, which I deem to be...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...violations of ethical standards, I will file a complaint. I would not try to hinder the judges in obtaining a salary increase, simply because they handed down decisions with which I disagreed, unless there was something very egregious about that decision and the implications of it. So I want to end in the way that I started. I support the amendments, I support the bill, and I think there's little choice for the Legislature, other than to do what we're doing with this bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on AM1355? Senator Bourne. Senator Bourne, your light is the only light on. You can either speak or close.

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Synowiecki just came...I'm sorry. You didn't get closed soon enough. Senator Bourne, then Senator Synowiecki.

SENATOR BOURNE: Then I'll waive off, Mr. President.

SENATOR CUDABACK: Senator Bourne waives off his opportunity. Senator Synowiecki.

SENATOR SYNOWIECKI: Senator Cudaback, members, it's pretty evident that the amendment is going to be adopted, and I'm not necessarily, you know, fighting it, by any means. I want an effective, and I want an accomplished judiciary, just like everyone else. But I just wanted to make members aware of some of these underlying issues. You need to be cognizant of this. Perhaps on Select File we can look at something, to look at and examine our judiciary's compensation as a whole, and not just salaries. While it's true they bypassed raises last biennium, they in fact received an enhancement to their retirement program. And while it's true they may rank, in studies, in the middle of the pack relative to states, you know, I think as part...again, as part of that examination, and as part of that analysis, you have to take into account the retirement benefits, the compensation as a whole. And I bring this to the body as a member of the Retirement Committee, and that you need to vote as an informed voter on these kind of issues. We're talking about, in the state of Nebraska, a district court judge whose salary compensation is at or around \$110,000 a year, and again, if they're fully vested in the retirement program, upon retirement, they receive a retirement benefit, a defined benefit, in excess of \$70,000 a year. You just need to know that, that that's what you're voting on here. And are we at a critical mass at this time, where we're not attracting accomplished attorneys to the judiciary? I don't think we are. I think we are getting individuals applying for these positions that are quite accomplished and have quite a bit of experience relative to what is needed to become an effective judge. I just bring this to the body so that you know what's going on, so that you can be informed of the benefits relative to this, so that you can be informed relative to these court fees that indeed, we're going to rely upon, a court fee put upon those individuals that access our judiciary system, many of whom are poor, quite frankly. And

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then they will help offset the structural imbalances within the judicial retirement plan, which again is, without question, the most lucrative plan that we support as a body. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator Bourne, yours is the only light. Did you wish to speak or close?

SENATOR BOURNE: Mr. President, I'd yield my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, a lapse was brought to my attention. When I was talking about that issue involving Hergert, I mentioned Hergert, I mentioned Senator Engel, but I didn't name the lobbyists, O'Hara and Lindsay. And I believe Lindsay is the one who may have made the request, but that is the lobbying firm representing Mr. Hergert, and the request came from them. Since I'm naming names, I ought not to have just said lobbyist, and let me go at that. I should have given the name; I didn't, so that is now a matter of the same record that exists and was created by my earlier comments. I would give back to Senator Bourne whatever time remains, if he wants it. Thank you, Mr. President.

SENATOR CUDABACK: Senator Bourne, about 3.5 minutes.

SENATOR BOURNE: Thank you, Mr. President. Is...are there other lights on after this?

SENATOR CUDABACK: There are no other lights on.

SENATOR BOURNE: No other lights? If I could use this as my close?

SENATOR CUDABACK: I will...you will stop your debate now. Then I will recognize you to close. So your 5 minutes you're waiving. So now I recognize Senator Bourne to close.

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SENATOR BOURNE: Thank you, Mr. President, members. The amendment before us, AM1355, simply corrects a miscalculation. I had drafted the amendment so that it read \$123,152. The correct amount is \$126,846. I would urge your adoption of AM1355.

SENATOR CUDABACK: You've heard the closing on AM1355. The question before the body is, shall that amendment be adopted to the committee amendments? All in favor vote aye; opposed, nay. Voting on adoption of the Bourne amendment, AM1355. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 29 ayes, 3 nays, Mr. President, on the adoption of Senator Bourne's amendment.

SENATOR CUDABACK: AM1355 has been adopted. Mr. Clerk, next motion, please.

CLERK: Senator Bourne would move to amend with AM1349, Mr. President. (Legislative Journal pages 1647-1648.)

SENATOR CUDABACK: Senator Bourne, to open on AM1349 to AM1332.

SENATOR BOURNE: Thank you, Mr. President, members. This amendment was brought to me by the Supreme Court, and it basically gives the court the authority to accept credit cards, as provided in subsection (3) of Section 81-118.01 of our statutes. It allows the court to charge a fee to reflect handling and payment costs only. The fee can only be charged if it is allowed by the operating rules and regulations of the credit card company. The Supreme Court currently operates under a Chapter 33 fee statute, but would like to switch its authority to collect this fee to Section 81.118.01, to align itself with other state agencies. And again, all it would allow the court to do is align itself with the other agencies and pass on handling fees, if the credit card company agreement allows such. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the

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opening on AM1349 to the committee amendments. Open for discussion on that motion. Anybody wishing to discuss the Bourne amendment, AM1349? Senator Bourne, there are no lights on. Senator Bourne waives closing. The question before the body is the Bourne amendment, AM1349, to the committee amendments. All in favor vote aye; opposed vote nay. The question before the body is the Bourne amendment, AM1349, which amends the committee amendments to LB 348. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 2 nays, Mr. President, on the adoption of Senator Bourne's amendment to the committee amendments.

SENATOR CUDABACK: The Bourne amendment has been adopted. Anything further on the committee amendments, Mr. Clerk?

CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Back to discussion of the committee amendments themselves, as amended. Senator Wehrbein, followed by Senator Synowiecki. Senator Wehrbein.

SENATOR WEHRBEIN: Mr. President, members, I'd just like to ask somebody a question, I guess, for...I'd like on--Senator Bourne, I guess--on LB 758, on the notary issue.

SENATOR CUDABACK: Senator...

SENATOR WEHRBEIN: That is part of this bill; am I correct?

SENATOR CUDABACK: Senator Bourne, would you respond?

SENATOR BOURNE: Certainly.

SENATOR WEHRBEIN: Would you give a little more explanation of what that's about, in this amendment?

SENATOR BOURNE: Are you...you're talking about LB 758?

SENATOR WEHRBEIN: Yes.

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SENATOR BOURNE: Okay, thank you, Mr. Wehrbein, Senator Wehrbein, for bringing that to my attention. I thought that Senator Brashear had mentioned that in the opening. Basically,...

SENATOR WEHRBEIN: He mentioned it, but I thought he didn't give much detail.

SENATOR BOURNE: Sure. It removes from the Secretary of State the duty to appoint persons to investigate malfeasance of a notary public. What was going on is that, in our statutes, there was a...basically, an outdated set of statutes that would allow a notary public to punish a witness if they refused to obey a summons to appear for a deposition. And this was a bill that was introduced by Senator Chambers. The language was archaic, and it simply...we just don't want to allow notary publics to...notaries public to punish someone if they fail to appear when ordered to do so, or requested to do so.

SENATOR WEHRBEIN: Is there an alternative to that, then?

SENATOR BOURNE: The court, on its own order, can institute a contempt proceeding against a witness who doesn't comply, but we felt it was more appropriate for the court to determine that, rather than an individual notary public.

SENATOR WEHRBEIN: So the authority is there. It lies in the court instead of the notary, then?

SENATOR BOURNE: The authority is there, and in our opinion, it's there in a more appropriate place; i.e., the court.

SENATOR WEHRBEIN: Thank you.

SENATOR BOURNE: Thank you for bringing that to our attention, Senator.

SENATOR CUDABACK: Thank you, Senator Wehrbein. Further discussion? Senator Synowiecki, followed by Senator Kopplin.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. I'd like to

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see if I can ask Senator Stuhr a question in her capacity as Chair of the Retirement Committee.

SENATOR CUDABACK: Senator Stuhr, would you yield?

SENATOR STUHR: Yes.

SENATOR SYNOWIECKI: Senator Stuhr, didn't we just this year, this body, increase the contribution by teachers and by state patrolmen to their retirement benefits, because of some structural problems with the fiduciary angle of their plans?

SENATOR STUHR: Yes, Senator Synowiecki, we met with both groups prior to the legislative session, and both groups were willing to come forth and have an additional increase, a short time, we said for the, you know, for the next biennium.

SENATOR SYNOWIECKI: And if my recollection serves me correctly, the teachers, in particular, kind of stepped up to the plate, participated in solving the problem with the retirement plan. Isn't that a fair synopsis?

SENATOR STUHR: Yes, it is, Senator Synowiecki.

SENATOR SYNOWIECKI: Now the judges have a very similar problem relative to their retirement plan, in terms of inequities or in terms of imbalances?

SENATOR STUHR: Yes, we're looking at \$644,000 from the judges this year...requirement.

SENATOR SYNOWIECKI: Now both the teachers and State Patrol are contributing and participating in solving their problems with their retirement plans. Isn't that right?

SENATOR STUHR: Yes.

SENATOR SYNOWIECKI: Under LB 348, are the judges participating, in any degree whatsoever, to the imbalance in their retirement program?

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SENATOR STUHR: As I stated before, those new retirees will pay the increase, I mean the new...the new judges.

SENATOR SYNOWIECKI: Okay. But they received a corresponding benefit for that.

SENATOR STUHR: Yes.

SENATOR SYNOWIECKI: I'm talking about the structural imbalance of the plan, as addressed under LB 348. Yes, some judges are going to pay a couple extra percent, but they get a corresponding benefit.

SENATOR STUHR: That's correct.

SENATOR SYNOWIECKI: I'm talking about the deficiencies that's being addressed with LB 348. The judges are not participating in that inefficiency, or that deficiency.

SENATOR STUHR: That's correct.

SENATOR SYNOWIECKI: Citizens that access our court systems, including the poor, are going to participate in rectifying that problem. Isn't that right?

SENATOR STUHR: That's correct.

SENATOR SYNOWIECKI: Thank you, Senator Stuhr. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator Kopplin, followed by Senator Brashear.

SENATOR KOPPLIN: Thank you, Mr. President, members of the Legislature. May I ask Senator Stuhr some questions, please?

SENATOR CUDABACK: Senator Stuhr, would you yield to a question from Senator Kopplin?

SENATOR STUHR: Yes.

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SENATOR KOPPLIN: I'm trying to understand this retirement. I just want to clear a couple of things in my mind. The rate of participation for the judges, is that 4 percent? Is that what this says?

SENATOR STUHR: I'm sorry, I don't know where you're, you are getting the figure. Right now, the member contribution is 6 percent for the old members that did not select the new benefit.

SENATOR KOPPLIN: Okay, and the teachers' plan, the percentage of contribution is what?

SENATOR STUHR: I have...7.2 was the old figure, and I believe 7.9 is the new, correct for '05 and '06.

SENATOR KOPPLIN: Okay. Okay, my problem is simply...it's a very simple one. If you have a large group of teachers and so on contributing 7 percent and judges contributing considerably less, why don't they just increase their contribution and take care of their problem? That's the problem in my mind. Thank you for the time. I will have to figure this out, as we go on in the debate. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Kopplin. On with discussion by Senator Brashear.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. I appreciate the discussion, but in the interest of balance, some of us have lived through some of these issues more than once, and have had to look at all sides. Let's go back, and I really wasn't trying...I'm not trying to hang any merit badges on anybody, but by the same token, I'm not going to let innuendo and opinion, I think, reflect badly. Typically, what we ought to remember about retirement plans as a basic piece of law is that you only...it's a contract, and each party is required to do what it has committed to do. And ordinarily, with regard to retirement, you aren't going to change the contribution level, unless you change the benefits. Now that doesn't mean people can't voluntarily do that, but as a part of a negotiation which everybody, or almost everybody here

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understands takes place, last year when the judges did forego the salary increase that others got...and I'm not denying what judges' salary levels are, and they are paid more than some other people in state government who might want to be paid more, but the fact of the matter is, some positions draw more compensation than do other positions. That's just life. And we may not have a shortfall of applicants now, but the surest way to get a shortfall of applicants is to drop further, in terms of our national standing for the compensation of judges. And we certainly aren't in the top half, or leading the nation. Even if you factor in retirement, which has been done, I'm reliably informed by counsel for the Retirement Committee, so I'm sure all the Retirement Committee members are familiar with that study that indicates that, on a par, teachers and judges and so on are all contributing approximately the right amounts. But the fact rather than the fiction of the last round of negotiations was that in return for giving up any salary increase, and in return for agreeing to increase contributions to the retirement plan--agreeing to increase contributions to the retirement plan--some benefit changes were made, including a spousal benefit. None of these plans are mirror images of the other, and there are pluses and minuses to each of them, and in order to really deal with them informatively for the sake of the whole body, you have to sit down with all of them and talk about them with an understanding of both fact and law. And so, I don't...everybody is entitled to their opinion here. The microphone belongs to each of us. I simply wasn't going to let all the issues that were being raised go without some explanation that the last time the judges didn't take a salary increase is because they agreed not to. The last time the judges took an increase in their contribution to their retirement, it's because they volunteered, since that seems to be our eager word here, volunteered to do it, and there were some adjustments made to the retirement benefit, because that actually made the deal work at law. Teachers I commend for their willingness to step forward and make an increased contribution, and they can do that. And the question will become, if anybody tries to force that down their throat, can they resist it and, legally, could they succeed? So there are two sides to the question, and I will be happy,...

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SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...on this file or on Select File, we can get all the preparation done and discuss the whole of the matter. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Before we go on, the cookies are being handed out are in celebration of Senator (inaudible) first grandson, born yesterday, William Hall. Congratulations, Senator. On with discussion of the AM1332. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I just want to give a little more comment on the notary public provision. People find out about me, and they seek my help. I got a request from a couple in Canada. They had been to Nebraska to visit a relative, and a notary had put together a subpoena. What the law allows, if a person does not show up, is for the notary to summon the sheriff and have that person put in jail. That kind of power resides nowhere, and it should not reside with a notary public. So what the change in the law will do is strike that power out of the notary public section, and if a person is to be dealt with in any manner, for failure to appear before a notary, the notary would have to go to a court, convince the court, then the court would determine the remedy. But there would be no such thing as a notary summoning a sheriff, and straight to jail you go. There's another thing which indicates that that notary law needs some work. Court reporters do not have a statute authorizing their existence or empowering them to do the things they do. They operate under the notary statute. They are allowed to take depositions, issues summonses, and do all of the things they do. Rather than have them operate under the notary section, if I have time that I can steal from my work this summer in trying to do some legal work on the issue of term limits, I'm going to fashion a change in the law that will create provisions dealing specifically with court reporters. That, I hope, explains the main reason for my wanting to change that notary law. Now, when the day comes that you all become internationally known as I am, it might diminish my workload. When you become as well known in the state for being willing to help people outside of your district, you will

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be called, and that will diminish my workload. When you are as responsive to people in your district as I am to people in your district, that will reduce my workload. You don't know how many times I come in here and I look at senators doing nothing; pass their offices, they're doing nothing. And then go to my office and look at all of the phone calls I have stacked up waiting for me, from people I've never seen, from parts of the state whose name I don't even recognize. But I help people whenever and wherever I can. So I repeat, until you do everything you ought to do as a senator, and until you work as hard as I work, don't come telling me how to do anything. I will paraphrase what Jesus is supposed to have said. He said, let him that is without sin among you cast the first stone, at this woman who was brought to him to be punished for having committed adultery, allegedly caught in the very act. But they didn't bring the man, and it takes two to do that tango. But they brought only the woman. So I will say, cast no criticism at me until you have functioned as I have functioned, and if you do that, you will be amazed, and you wouldn't have the energy, the tenacity, or even the will to do what I do. You all get tired from just sitting around here. And I'm venting...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...because there is a lot of work the chairman...not the chairman, the Speaker has assigned me to do today, and I'm getting ready. And I will not get tired, I will not run down, I will not burn out. Bad bills are here, and I must deal with them, and I shall. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. I thought that I should clarify a little bit, as to the retirement plan of the judges, relative to the other retirement plans that we have. When we first heard this bill, or excuse me, Senator Brashear's bill, to apply court fees to the retirement plan, to be quite honest with you, I kind of grilled the lobbyist in committee, because I was like Senator Synowiecki and Senator Kopplin, somewhat resentful of the fact that the judges were not paying

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additional money out their pocket and we're having the shortfall taken care of through a fee assessment, rather than their own responsibility. After I investigated a little bit, the legal counsel to the Retirement Committee also investigated this, and he helped me, and I am very comfortable that the judges' contribution relative to their salary, and the teachers' and the state employees' plan, relative to their salaries, their contributions relative to their salaries, are fairly fair. I mean, I think the parity is there. The judges' contributions relative to their salary, and the state employees' and the teachers' contributions relative to their salary, I feel, are equal, or relatively are very close thereto. So I am comfortable that what we are doing is right, it makes sense. I understand that some people might have some resentment, given the judges did sue over this issue a couple of years ago, but to be quite honest, the Legislature did the wrong thing by increasing the judges' contributions without a corresponding increase in benefits, and they were entitled to sue. Anyway, I don't know, as it relates to the teachers, why they're doing what they're doing, but I am comfortable that the amount the judges pay out of their own pocket for their retirement is on par with what the other state employees and the teachers are paying out their pocket for their retirement benefits. I'm very comfortable doing what we're doing, and I would urge your adoption of this amendment, and the committee amendment, and the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. On with discussion. Senator Stuhr, followed by Senator Synowiecki.

SENATOR STUHR: Thank you, Mr. President and members of the body. I feel that I need to clarify a little bit the question that Senator Kopplin asked me in regard to the judges, and just share with you. And when we are talking about the judges, we are talking about a much smaller group. We have like 171 judges, and 76 of those judges are paying 8 percent. Thirty-four of those judges are paying the 6 percent; 32 are paying the 4 percent, which means those are the 32 that have served over 20 years, and prior to the bill that we had previously passed, were not paying...were paying zero. And now they are paying 4 percent. Twenty-nine percent are not paying

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an increase, because they chose not to select the new benefit. So also, in comparison to the school retirement--and again, we have expressed our thanks to those school employees and employers who decided to come forth this year and raise their contribution--we are talking about, for '05 and '06, seven one-hundredths of a percent, or seven-tenths, excuse me, seven-tenths of one percent, because we are talking about larger numbers in the school retirement plan. And then for '06 and '07, that will be five-tenths of one percent. So again, we're having all of these major difficulties because, going back to 9-11 and the impact that it had on the economy and the investments, and we have a smoothing out period of five years. So instead of taking all of those losses in one year, which would be almost impossible for any state to absorb, we spread those losses out over five years, and so that's why we are talking, in the next few years, that we will still see that smoothing operation going on, to help overcome those deficits that we had from our investment. So I felt that I needed to clarify that point, and I do agree with Senator Bourne that I think we're looking at getting the systems more in line, not to say that more couldn't be done. But I...so with that, I'll close my remarks and return the rest of my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. And I appreciate Senator Stuhr's remarks. You know, first of all, relative to facts, the survey that Senator Brashear mentioned in his opening did not, indeed, incorporate retirement benefits as compensation as a whole, in his analysis of where our judges rank with other states. Secondly, as I indicated before, a district court judge in the state of Nebraska earns \$110,000 a year. When they're fully vested in the retirement program, the retirement benefit is in excess of \$70,000 a year. Fact: That the school employees had deficiencies in their program, retirement program. The State Patrol had deficiencies in their retirement program, as Senator Stuhr kind of alluded to the reasons behind that, with the economy. The judges have deficiencies in their retirement program, but here's the

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difference. The school employees, teachers, and the State Patrol are participating economically in arriving at a resolution to their retirement plan matter. The state patrolmen are going to...State Patrol officers will be contributing more, monetarily, from their pay, toward their program. Teachers in our state will be contributing more from their pay to their retirement program. The fact is, under LB 348, the judges will not be contributing, and will not be participating in the solution to their program. That's a fact. I'd like to ask Senator Stuhr a question, if I could.

SENATOR CUDABACK: Senator Stuhr, would you respond?

SENATOR STUHR: Yes.

SENATOR SYNOWIECKI: Senator Stuhr, would you be at all interested, perhaps, in having a dialogue, again, in your capacity as Chair of the Retirement Committee, so that we could have some equity relative to these retirement programs, to look at possibly getting a Retirement Committee amendment, or an amendment put onto LB 348 on Select File, so we could have a more equitable approach to this, relative to the deficiencies in the retirement plans?

SENATOR STUHR: Senator Bourne (sic), I will very willingly visit with anyone and work with anyone that is willing to do so.

SENATOR SYNOWIECKI: I appreciate that, Senator Stuhr. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Further discussion? Senator Bourne, there are no further lights on. The Chair recognizes you to close on AM1332.

SENATOR BOURNE: Thank you, Mr. President, members. I appreciate the debate we've had. This is something that I feel very comfortable with going forward on. I would appreciate your adoption of the committee amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on AM1332, the committee amendments to LB 348. The

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question is, shall those amendments be adopted, as amended? All in favor vote aye; opposed, nay. Voting on the adoption of the Judiciary Committee amendments to LB 348. Have you all voted on the question who care to? Have you all voted? Record please, Mr. Clerk.

CLERK: 27 ayes, 4 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: The committee amendments have been adopted.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Discussion of the advancement of LB 348? Senator Bourne, there are no lights on. I recognize you to close on the advancement of LB 348.

SENATOR BOURNE: Thank you, Mr. President, members. What we have is a comprehensive package. It increases the judges' salaries by 3 percent in the first year, 3.25 percent in the second year. That is similar or exactly the same as what the state employees got. It does increase court filing fees to satisfy our obligation to the judges retirement fund, and it does eliminate the ability for a notary public to basically send someone to jail who doesn't honor a summons for some sort of a transcription. With that, I would urge your adoption of...or advancement of LB 348. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on the advancement of LB 348. The question before the body is, shall LB 348 advance to E & R Initial? All in favor of the question vote aye; those opposed, nay. Voting on the advancement of LB 348 to E & R Initial. Have you all voted who care to on the question? Record please, Mr. Clerk.

CLERK: 29 ayes, 3 nays, Mr. President, on the advancement of LB 348.

SENATOR CUDABACK: LB 348 advances. We now go to Select File, 2005 committee second priority bill...I'm sorry, Select File, 2005 Speaker priority bill. Mr. Clerk.

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CLERK: LB 566, Senator Flood, I have Enrollment and Review amendments, first of all. (AM7069, Legislative Journal page 1044.)

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 566.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 566. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Senator Don Pederson would move to amend with AM1315. (Legislative Journal page 1304.)

SENATOR CUDABACK: Senator Pederson, to open on AM1315.

SENATOR D. PEDERSON: Thank you, Mr. President, members of the Legislature. This is an amendment to Senator Schimek's bill, which she has graciously allowed me to add, and this was an amendment that was basically brought to us by the Secretary of State, because in the city of North Platte, they had an unusual situation that occurred, in that they chose to have election by districts for their school board, and the law doesn't seem to really work with them, because they have six-person board. I'll go through what I have here. Current law, 32-554(4), requires a subdivision, that has changed from at-large to district elections, to draw their districts so that odd-numbered districts are elected one year, and even-numbered districts the next year. This requirement, when coupled with the provision that the districts must be equal in size, has the result of limiting the election structure in certain circumstances. As an example, a Class III school district which has either six or nine members is limited to either two or six districts, in the case of a six-member board, or nine districts in the case of nine-member boards, in order to elect half of the board at each election. There are other solutions that are equally as fair, but not allowed by the statute. North Platte Public School, a six-member Class III school, made the change to district at the

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last November election and proposed three districts with two members representing each district, one of each district elected at each election cycle. Unfortunately, this does not mesh with the even/odd scenario laid out in our statute. What AM1315 proposes to accomplish is to remove the even/odd language currently in the statute and, instead, provide that approximately one-half of the members are elected at each election. Evenly populated districts are maintained through other statute provisions, but some flexibility is provided to political subdivisions on how their districts are to be drawn. The statute currently states that districts or wards shall be created no later than October 1 in the year following the general election at which the question was voted on. I also want to point out that because the other sections of LB 566 have an operative date of January 1, 2006, Section 32 would become operative three calendar months after the adjournment, and allows the city of North Platte, the school district, to handle this issue at their September meeting, thus complying with our current statute. I respectfully request your support. Thank you. This is mainly a clarification to allow a six-person school board district election that will allow them to have a division to provide for equal numbers at the alternate elections. You know, I would be glad to answer any questions.

SENATOR CUDABACK: Thank you, Senator Pederson. You've heard the opening on the Pederson amendment, AM1315. Open for discussion. Senator Pederson, there are no...Senator Pederson waives closing. The question before the body is, shall AM1315 be adopted to LB 566? All in favor vote aye; opposed, nay. Voting on the adoption of the Pederson amendment, AM1315. Have you all...voting on AM1315, offered by Senator Pederson to LB 566. Members, have you all voted who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays on adoption of the amendment.

SENATOR CUDABACK: The Pederson amendment has been adopted. Mr. Clerk, the next motion, please.

CLERK: Senator Schimek would move to amend, AM0993. (Legislative Journal page 1528.)

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LB 53, 98, 401, 566

SENATOR CUDABACK: Senator Schimek.

SENATOR SCHIMEK: Thank you, Mr. President and members. Just to refresh your memory a little bit, we actually dealt with LB 566 on General File some time back, and what LB 566 is, is a clean up of the Election Act. And there wasn't really any controversy about it in committee or on the floor on General File, but we asked the Speaker to hold it because we knew there would have to be amendments to it regarding other election acts that we were actually in the process of passing this year also. So AM0993 incorporates those changes, and they harmonize the provisions of LB 53, which is the bill allowing ex-felons to vote two years after completing their sentence. It allows...or it provides that...we changed the term "absentee ballot" to "ballot for early voting," which was incorporated into LB 98. And then, finally, the provisions of LB 401, which was the bill that had several other bills in it which allowed a voter to vote provisionally, or receive a new absentee ballot. It allowed things such as the satellite voting, the situation for those less-populous counties where precincts could be voting by mail, so it incorporated a lot of those changes. So anyway, I don't believe this is controversial; it's just harmonizing. The whole bill is basically technical. I'd like your support for AM0993. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening on the Schimek amendment, AM0993. Open for discussion. Senator Schimek, there are no lights on. Senator Schimek waives closing. The question before the body is, shall AM0993 be adopted? All in favor vote aye; those opposed to the motion vote nay. The question before the body is the Schimek amendment, AM0993, an amendment to LB 566. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Schimek's amendment.

SENATOR CUDABACK: The Schimek amendment has been adopted.

CLERK: I have nothing further on the bill, Mr. President.

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SENATOR CUDABACK: Thank you, Mr. Clerk. Open for discussion.
Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature.
Senator Schimek, just some questions, if I might.

SENATOR CUDABACK: Senator Schimek.

SENATOR BEUTLER: I don't know if you've had many inquiries
about the possibility of computer fraud in elections, but I know
there are some people concerned about that, about the rigging of
computers, about the ability of programmers to surreptitiously
fix computers.

SENATOR SCHIMEK: You're talking about equipment such as the...

SENATOR BEUTLER: Election equipment.

SENATOR SCHIMEK: ...electrical scanners, optical scanners, I
mean,...

SENATOR BEUTLER: Right, right.

SENATOR SCHIMEK: ...and the screens that we use for those with
disabilities.

SENATOR BEUTLER: Yes. And I don't know hardly anything in this
area, but I assume that with the increasing technologies and the
great sophistication that is now somewhat prevalent in our
society with regard to computer programming, that such a thing
would be possible. My question is this: With regard to
equipment that's used every election cycle, what kinds of
safeguards, if any, are there to check on the appropriate
programming of computers, of the computers that run these
tabulating machines, and the kinds of machines that we're using
in the election process?

SENATOR SCHIMEK: Senator Beutler, that's a good question. I'm
really glad to have the questions, because I think it could
clear up some questions that other members of the body have come

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to me with, because they've heard from some of these same constituents. First of all, the election commissioners, before each election, check--do dry runs with their equipment or whatever, to check to make sure that everything is in order. And we've been using optical scanners in this state for a very long time, particularly, I know, here in Lancaster County. And there's never even been a hint of anything like that occurring. But they do...they do check the equipment frequently. Secondly, one of the things that the group of, I believe they call themselves, Concerned Citizens has been contacting senators about is the fact that these, I believe they're called, DREs, these screens by which those with disabilities can vote, kind of like an ATM machine, and there's going to be at least one of those in each precinct in Nebraska, starting in the year 2006. They've been concerned because they thought there should be a paper trail with that equipment. And it's something that the Government Committee has had briefings on from time to time, that the Secretary of State has been evaluating for quite a while. But the Secretary of State has finally decided that the paper ballots are necessary for several reasons, but probably the most prominent reason is so that people will feel secure that their election system is transparent; that the results are verifiable. And so I believe that the Secretary of State's office has explained to Concerned Citizens that there will be paper ballots, but I don't know that something is being lost in the translation. Those machines are in order; they will provide that security for us.

SENATOR BEUTLER: Okay, I appreciate that explanation. Secondly,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...the, you know, just looking through this bill and understanding that this bill isn't a tenth part of the entire election law, we have county clerks out there who have a lot of responsibilities with regard to all kinds of county activities, who are also the election commissioners and have to deal with this whole complex of laws, who are also clerks of the district court and have to deal with a whole complex set of laws. How is it that we expect these people to do an adequate

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job at any of those jobs, when they're called upon to have a knowledge base that is probably impossible, in terms of doing all those jobs well? Is that a problem in the election area?

SENATOR SCHIMEK: I think it is, to some degree. I think it...

SENATOR CUDABACK: You may continue, Senator Beutler, it's on your time now.

SENATOR SCHIMEK: I think to some degree that that has been a problem. For instance, I think Cass County was a good example this last election cycle. Cass County decided not to have an election commissioner any more, but rather, have a county clerk, if I'm remembering this right. And there was a mistake made when the ballots were sent out absentee to a group of voters, because they were unsigned, and they have to be signed by the election commissioner's office, so those all had to be recalled. And some of them were able to get back out into the hands of those voters and back in, but not all of them. So it caused a disruption. You're right. Those county clerks and election commissioners alike have a great deal to learn, and we keep changing the law on them all the time, and partly because of requirements at the federal level. But having said that, the Secretary of State's Office and NACO, both, try to provide lots of training for these county clerks and election commissioners. And I think the Secretary of State has a good relationship with those county clerks and election commissioners so that they feel free to call at any time they need, for advice about questions they may have.

SENATOR BEUTLER: Well, as you're aware, I just think they would do a lot better job with their election law work, if they didn't have certain other responsibilities...

SENATOR SCHIMEK: I agree.

SENATOR BEUTLER: ...that were equally complex.

SENATOR SCHIMEK: Does this have anything to do with anything else, Senator Beutler?

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SENATOR BEUTLER: That's for you to surmise, Senator.

SENATOR SCHIMEK: Okay. (Laugh)

SENATOR BEUTLER: I wanted to ask you one last question, if I could. In the applications for...in the section dealing with applications for registration...

SENATOR SCHIMEK: In the bill?

SENATOR BEUTLER: In the bill, and I'm still looking at the green copy of the bill. I couldn't catch up with you on the amendment. But in the green copy of the bill, assuming it's still in the bill, on page 13, down at the bottom, it states that with the application a copy of a photo identification which is current and valid has to be submitted, or a copy of the utility bill, bank statement, government check, paycheck, or other government document, which you've now defined. How does a utility bill serve that kind of function? I mean, if the function is identification...I mean, certainly, there's a name on a utility bill, but is there some process in getting utility services hooked up that definitely identifies the person?

SENATOR SCHIMEK: Well, I think...

SENATOR BEUTLER: I mean, if you're a renter and you give the utility company a name and they hook up your service, do they do something more that creates some sort of real identification?

SENATOR SCHIMEK: Well, first of all...and I'm not sure I'm going to answer this...well, the first thing is, you're very unlikely to have somebody else's utility bill. That's the first thing. So it would be highly likely that that particular utility bill that you give them is your very own, and it would identify you. I would think also it would be highly unlikely that you would be billed under another name than your real name. It's possible, but probably highly unlikely. The other thing about it is, Senator Beutler, that you have to swear to this, I believe, when you fill out your voter registration form, and so, if you're not telling the truth, you're going to get hit with a...I think it's a Class IV, Class III...

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SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...felony. So there's, I mean...

SENATOR BEUTLER: If somebody else is delivering that registration form, though, which they can under the bill, as I understand it, how do you know that they've filled out the form themselves?

SENATOR SCHIMEK: How do you know that the person for whom they're delivering it actually filled out the form?

SENATOR BEUTLER: Yes.

SENATOR SCHIMEK: I don't know.

SENATOR BEUTLER: Okay. But overall, in this kind of thing, we are dealing with not necessarily certainties, but high degree of probabilities?

SENATOR SCHIMEK: A high degree of probabilities, I suspect, given that...

SENATOR CUDABACK: Time, Senator. Senator Schimek.

SENATOR SCHIMEK: Senator Beutler, would you...thank you, Mr. President. Would you like to continue in any way?

SENATOR BEUTLER: No, I really wouldn't. I'm just confused by a couple of the provisions, but I'm sure it's fine.

SENATOR SCHIMEK: Well, some of the provisions are required by federal law, and I think this may be one of them. I think what we don't want to do is make it impossible for somebody to vote because they don't have a photo I.D. or something like that, so...

SENATOR BEUTLER: Some of these things seem so easy to acquire...

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SENATOR SCHIMEK: Yes.

SENATOR BEUTLER: ...that I'm, frankly, bothered. I mean, I never have been one who said, we shouldn't make this easier. I mean, I've always, in the early part of my career, pushed for that. You and I have worked on...

SENATOR SCHIMEK: Right.

SENATOR BEUTLER: ...a number of bills in the past related to that. But somehow, what has come down from the federal government seems to me to go beyond what's reasonable in certain ways.

SENATOR SCHIMEK: Well, and I'd have to check...

SENATOR BEUTLER: I mean, citizens have to make some efforts to regularize their life in a community, and it seems to me that getting a driver's license or getting some sort of identification shouldn't be all that hard.

SENATOR SCHIMEK: But not everybody drives.

SENATOR BEUTLER: Well, I know not everybody drives.

SENATOR SCHIMEK: Yeah. No.

SENATOR BEUTLER: But there are other things that...

SENATOR SCHIMEK: Well, again...

SENATOR BEUTLER: ...something other than a utility bill.

SENATOR SCHIMEK: Again, I, you know, you can't totally eliminate the possibility of fraud in this arena or in other aspects of the process. But until we hear of some kind of abuse of the system, I think that we have to trust that it does work. Thank you.

SENATOR BEUTLER: Okay, thank you.

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SENATOR CUDABACK: Senator Connealy. Senator Connealy waives his time. Any further discussion? Senator Flood? Senator Chambers, you're recognized.

SENATOR CHAMBERS: Yes. Mr. President, members of the Legislature, Senator Schimek, forgive me for getting in on the end of this discussion, but there are other bad bills. Yours is not among the bad ones. I should have said other bills which are bad, that I've been working on. The Speaker is really putting the lumber to me today, but I'm not going to whine and complain. What caught my attention was when you said there might be fraud here, because there can be in every system, so bear with me as I ask you, what is the issue that you and Senator Beutler have been discussing?

SENATOR SCHIMEK: The issue, Senator Chambers, was whether a utility bill was enough identification when you are applying for a voter registration. And I explained that some of these provisions do come from the federal act and this...I checked with staff, this does happen to be one of them. The idea is not to make it so difficult for somebody to vote that they can't do it.

SENATOR CHAMBERS: And the utility bill is acceptable under...

SENATOR SCHIMEK: Yes.

SENATOR CHAMBERS: Now, another thing that I wasn't aware of, because it's been so long ago that I registered, and if it wasn't for the fact that people of my complexion were not allowed to vote as early as some others, I was about to tell one of my famous fibs about how long ago it was that I first registered. But some people, knowing history, would be aware that I wasn't telling the truth. I was going to talk about how Abraham Lincoln and I had melted some candles down to get enough to put it in a lamp so we could go to the registrar and scratch out our little registration with a piece of charcoal, but...and some people might have said, wow, Ernie, you really are dedicated. I couldn't tell that fib. But here's what I wanted to ask you: When did a person have to start showing identification in order to register to vote? It was so long ago

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that I first registered, I don't really recollect having had to do that.

SENATOR SCHIMEK: Counsel says two years ago, Senator.

SENATOR CHAMBERS: Oh, so it's a recent...

SENATOR SCHIMEK: But only for first time registering voters.

SENATOR CHAMBERS: Okay. And when a person goes to vote, there are some people who are trying to say that they should produce identification at the polls, but that is not anything that has taken effect in any state that I'm aware of; are you?

SENATOR SCHIMEK: No, Senator, I need to go back a minute. It is only when you're registering by mail, and you're a first-time voter, that you have to do that. In other words, when you don't go in person.

SENATOR CHAMBERS: So how could a...pardon me again. How can a person register by mail? I mean, what do they have to do?

SENATOR SCHIMEK: Sometimes just clip the voter registration form out of your local telephone book or your local newspaper, or sometimes different groups will have them in different places so you can do it by mail very easily. The post office, I believe, even has voter registration forms.

SENATOR CHAMBERS: Senator Schimek, with all of the work that you've done on election matters, you explained things in detail and you've given a lot of time to it. This is the first time I'm becoming really aware of what you're mentioning here, and you partly answered the question. Anybody is free to provide these forms to other people. Is that true?

SENATOR SCHIMEK: Yes, Senator, that is true.

SENATOR CHAMBERS: Okay, if you needed to talk to counsel, you can go ahead and then I'll just...

SENATOR SCHIMEK: Would you, for just a minute?

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SENATOR CHAMBERS: Sure. Members of the Legislature, I think the subject before us is very important. As many years as I've been down here, and as many of these...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...election bills as I've listened to, I have to admit that I've become somewhat saturated, but also I've developed a tendency to place a lot of reliance on the validity of what Senator Schimek and her committee will present to us. After the fact, there have been some issues with which I didn't completely agree, but they were minor in nature. But when I heard the word "fraud" mentioned, it caught my interest. Then, when she began to talk about being able to register by mail, that was even of greater interest to me. And if she could answer a question or two now, I would like to ask her a question.

SENATOR CUDABACK: Senator Schimek, would you respond?

SENATOR SCHIMEK: Yes, I would.

SENATOR CHAMBERS: Senator Schimek, there are a lot of people I know who don't drive a car and, by the way, they're not all elderly people. And if these forms were delivered, would it be allowable--because they're not casting a vote--for the person, such as myself, who would take the form, to have an addressed envelope, stand there while they fill out the form, stamp the envelope, and then I mail it? Is there anything illegal about that?

SENATOR CUDABACK: You may continue, Senator Chambers.

SENATOR SCHIMEK: No. No, there is not, Senator Chambers.

SENATOR CHAMBERS: Okay. And while I have you on this, and I have a little bit of time, in addition to a utility bill, what other, what we might call, nontraditional identification would be acceptable?

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SENATOR SCHIMEK: Let me read you the actual language. It says the applicant must submit with the application a copy of a photo identification which is current and valid, or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current, and that shows the name and address of the applicant, as they appear on the application, in order to avoid additional I.D. requirements when voting for the first time.

SENATOR CHAMBERS: How about a misdemeanor warrant, with the person's name and address on it? (Laugh)

SENATOR SCHIMEK: (Laugh) Well, it's a government document, isn't it?

SENATOR CHAMBERS: I just thought I'd throw that in. Thank you, Senator Schimek. You've been very helpful, and you have enlightened me today, and you've given me a new project, which I wasn't even aware that could be undertaken. I spend a lot of time encouraging people to register, and as I'm sure you know, when you get somebody and you can cause them to feel an excitement about voting, they really intend to register. But between the time you talk to them and they have to find the means to go to the election commissioner, or wherever they would have to go, they may tend to lose that enthusiasm. But something like what you've mentioned will make it possible for me, I think, to help increase the number of people on the voting rolls, in Omaha at least. So I appreciate that. Thank you.

SENATOR SCHIMEK: You're welcome. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. Any further discussion? Seeing...Senator Schimek, would you like to make the motion to advance to E & R for engrossing? You may do so.

SENATOR SCHIMEK: I would move the advancement of LB 566 to E & R Engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 566 to E & R Engrossing. All in favor say aye. Opposed, nay. It is advanced. Mr. Clerk, items for the record, please.

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LB 48, 90, 90A, 126, 312, 312A, 348A

CLERK: I do, Mr. President, thank you. Your Committee on Enrollment and Review reports they've examined and engrossed LB 90, LB 90A, LB 312, and LB 312A; all of those reported correctly engrossed. Senator Beutler, an amendment to LB 48 to be printed. And a new A bill. (Read LB 348A by title for the first time.) And that's all that I have, Mr. President. (Legislative Journal pages 1648-1655.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Pursuant to the Speaker's orders, we will stand at ease until further notice.

EASE

SENATOR CUDABACK: The Legislature will come to order. Mr. Clerk and members, Select File, 2005 committee first priority bills. Mr. Clerk, LB 126.

CLERK: Mr. President, LB 126. The first item I have are Enrollment and Review amendments. (AM7018, Legislative Journal page 573.)

SENATOR CUDABACK: Senator Connealy, would you make a motion, please.

SENATOR CONNEALY: Yes, Mr. President. I'd move the Enrollment and Review amendments to LB 126.

SENATOR CUDABACK: You've heard the motion by Senator Connealy to adopt the E & R amendments to LB 126. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Mr. President, the next amendment I have to the bill, Senator Loudon, AM0075. I have a note from Senator Loudon that he wishes to withdraw and substitute AM1217.

SENATOR CUDABACK: Any objection? So...is Senator Loudon present? Senator Loudon. If not, the amendment will go to the bottom of the pile and go to the next amendment. Mr. Clerk.

CLERK: The next amendment, Mr. President, Senator Smith, FA21.

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SENATOR CUDABACK: Senator Smith. Is Senator Smith present? Likewise, the Smith amendment will go to the bottom of the amendments.

CLERK: The next amendment, Mr. President, Senator Burling, AM0415.

SENATOR CUDABACK: Senator Burling, to open on your amendment.

SENATOR BURLING: Mr. President, I'd like to withdraw that amendment.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk.

CLERK: Mr. President, the next amendment I have, Senator Fischer, AM0100.

SENATOR CUDABACK: Senator Fischer, to open on...Senator Fischer.

SENATOR FISCHER: Yes.

CLERK: Senator Fischer, AM0100.

SENATOR CUDABACK: You're recognized to open on AM0100.

SENATOR FISCHER: Mr. President, at this point we were in a meeting. We didn't realize that you had started on us. Is there some way that I could switch from AM0100 to bring up an amendment that Senator Loudon and I have filed?

SENATOR CUDABACK: Mr. Clerk.

CLERK: Senator, can you identify for me an AM number?

SENATOR FISCHER: Do you have that?

CLERK: Is it the AM0217 or AM1217?

SENATOR CUDABACK: There has been a request to substitute. Any

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objection? So ordered.

CLERK: Mr. President, AM1217. Senator Louden is the primary introducer. (Legislative Journal pages 1655-1660.)

SENATOR CUDABACK: Senator Louden, as primary introducer, you're recognized to open. Senator Louden, on 12...

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As we've been discussing on this LB 126, we didn't realize that it would be coming up at the present time. We were under negotiations and then in the process; we still are. Nonetheless, I will present this amendment to LB 126 and go from there. AM1217 reflects the proposals made by senators who are concerned about the provisions of LB 126 as it stands on Select File. As you will recall, LB 126 was advanced to Select File with the agreement that proponents and opponents would have the opportunity to work on disagreements before the bill came up again for debate. Those of us who have worked on this--for want of a better term, I'll call them the common-sense committee--believe we have made bona fide attempts to work out disagreements, but supporters have not accepted our attempts at this point. Therefore, we feel that it is our option at this point to offer our proposals to the body. AM1217 includes these proposals, and I ask for your support. AM1217 would make the following changes in LB 126. First, it provides enhanced protection to what would become attendance centers under LB 126. Attendance centers would not be closed if they meet any of four protections: the first one, being located more than four miles from another school; second, having at least two students per grade offered; third, show that their costs are the same or less than the Class II, III, IV, or V district; or show that the student performance is the same or better than the Class II, III, IV, or V district. Second, AM1217 requires that state aid that results from demographic adjustments must follow the students who generate these demographic adjustments. These include the factors for Indian land, limited English proficiency, poverty, and extreme remoteness. Third, AM1217 would provide that LB 126 does not apply to any territory of a Class I district that is part of a Class VI district. A Class VI district is, in fact and by operation, a K-12 district

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with the budget authority controlled by the high school district. Fourth, AM1217 changes the definition of local system to include Class VI districts and its associated Class I districts. Finally, Class I districts that meet one of the four protections will continue to be affiliated with the Class II, III, IV, or V district as it was affiliated on December 1, 2005. Those protections are the same mentioned earlier. Class I districts would not be eliminated if they meet any of four protections--being located more than four miles from another school; having at least two students per grade offered; show that their costs are the same or less than the Class II, III, IV, or V district; or show that the student performance is the same or better than the Class II, III, IV district. I ask for your adoption of AM1217. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. You've heard the opening on AM1217, offered by Senator Louden to LB 126. Open for discussion. Senator Smith, followed by Senators Fischer and Erdman. Senator Smith. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. An interesting journey indeed and it gets more interesting with every day and with every minute. (Laugh) And I would like to speak candidly. I regret being nice on General File because there were some issues that I thought could be included and would be included. Shame on me for not requiring those in writing. Shame on me. I've worked on some other issues in this body this session, perhaps even today, where good faith negotiations are necessary, definitely desired, and sometimes they fall apart and sometimes you need to move on even after they've fallen apart. What disturbs me most about this entire issue relating to schools is that I took some risk in giving up some issues along the way relating to LB 126. I said I want autonomy, not in taxation and not even in budget authority; I want autonomy in the operating of a school so that the interested parents from a community can apply the dollars that they might get from the Class III, the K-12 district, so that they can apply those dollars in the most creative manner, most innovative manner possible so that they can leverage that community support. The most severely lacking component in public education today is community support, and primarily

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parental support. LB 126 may not seek to, but I'll guarantee you that LB 126 alienates the community from the public school system. Now I don't know what kind of forum we're going to see here in the next few minutes, next few days, I don't know. I have spent more time on this bill, and I know the Speaker has as well, I've spent more time on this bill than any priority bill I've had, including the one this year. And a couple of weeks ago we had an agreement that related to some autonomy in the operating of a school and that was pulled right out from under me, out from under us, because it was agreed upon in the group. That disturbs me. What disturbs me even more is if LB 126 becomes law, it's going to be harder to pass bond issues around Nebraska because there's alienation in the process. And then, when I hear that there's a desire to level the playing field because this Class I school over here might provide a little more opportunity to their students when the assimilating district cannot do that or chooses not to do that, we need to have LB 126 as a quality-driven issue instead of a quantity-of-dollar issue and especially when the quantity of dollars is not even really disputed. Class I schools across Nebraska have operated efficiently and effectively. Are there some high-cost districts? Yes. Are there some good reasons for that to be that way? Yes. They're answering state mandates. In fact, there are some points within what we might be looking at today on amendments, there are some points that are more state mandates.

SENATOR CUDABACK: One minute.

SENATOR SMITH: Is that how we want to operate? In some respects, I'm glad that this negotiation has fallen apart because I was a little nervous about that compromise, to be quite honest, Senator Chambers. We need to make sure that quality is at the forefront of this debate, and that quality comes about from the local community coming together to support those programs in a school because you get more parental support with that, you have happier students. And as a result, you have happier taxpayers, and there are just a few left in Nebraska. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Fischer,

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followed by Senator Erdman.

SENATOR FISCHER: Thank you, Mr. President and members. Well, after a long period of time now we are back on LB 126. As Senator Smith and Senator Louden said, we tried to do some negotiations here. I have a packet of proposals that have gone back and forth between the two groups. I can't tell you right now if we're still doing negotiations or not. As most of you know, there were nine people, ten counting the Speaker, off this floor in his office trying to work on something. And I don't know where we are on that. But the amendment that I've substituted from Senator Louden that I signed onto also, the amendment, AM1217, that's the first proposal, if you would pull it up, that's the first proposal that our group of eight senators came up with when we said we would negotiate. And when we, or most of us, not all of us, agreed that this would move on to Select File, I think that was a good starting place. And at this point in time, I think it's a pretty darn good proposal that you're looking at with AM1217. The eight people that have been involved in this, the senators, represent all parts of the state. As you know, Senator Heidemann is from the southeast corner; we have Senator Langemeier and Senator Flood from the eastern part of the state; and Senator Hudkins from the Malcolm/Lincoln area; Senator McDonald and myself are from the central part of the state; and from the western part of Nebraska we have Senator Smith and Senator Louden. All of us have different Class I districts and different types of Class I districts, whether they are affiliated or Class VIs within our legislative districts. All of us with our Class I's face different situations. That's been the problem with LB 126. LB 126 looks at the Class I's in this state as the same. They're not. And the eight of us know that they're not. So we came up, as our first proposal to Senator Raikes, with what is now the amendment to LB 126, AM1217. Senator Louden started going through this with you. I would like to address the amendment because I don't believe anybody here hasn't already heard the pros and the cons on what we have with school organization in this state. I don't think anybody in this Chamber is going to be swayed one way or another on the stories we give you or the facts we give you about the need for Class I's, the misinformation and the wrong perceptions that

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have gone on for years about Class I's. You're not going to listen to it. Your minds are made up one way or the other on that for the most part. But what we need to do now is to look at something that's going to work. And since the Class I's have been the targets in school governance reorganization, that's what we'll focus on. I will have to say, though, perhaps we need to look at one district per county. If you're truly going to look at efficiency and accountability...

SENATOR CUDABACK: One minute.

SENATOR FISCHER: ...in this state, as I said before, we're picking on the Class I's, if you really want to look at efficiency and accountability in this state, let's really look at where the costs are. How many districts are in Douglas County? What's their administrative cost? Oh, I digress. Let me go back to the amendment. I'll start it again next time, Mr. President, and thank you. I'll return the rest of my seconds here to the Chair.

SENATOR CUDABACK: Thank you, Senator Fischer. Senator Erdman, followed by Senator Stuhr.

SENATOR ERDMAN: Mr. President, I'd yield my time to Senator Smith.

SENATOR CUDABACK: Senator Smith.

SENATOR SMITH: Thank you, Mr. President and Senator Erdman. I've learned a lot more about Class I schools over the last several weeks. And I know that for the 231 Class I schools that exist there are about that many reasons that each and every one of them exist. There are several in Scotts Bluff County, some inside my district, some not. Even those Class I districts exist for differing reasons, but there is a common thread there and that is the community support. It's been interesting that the driving force behind the opponents of LB 126 are parents of students and very interested community volunteers. There's a big difference. Now behind the glass there's a lobbyist from one of the largest school districts in the state who seems to think that LB 126 sure needs to pass this year and how necessary

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it is. I question what is the impact to that particular district? But I've also learned in the past that that's not the requirement for the Lincoln Public Schools to be involved in certain issues here in the Legislature. I learned by visiting some schools about resident students, about option students, and that seems to be a hang-up on LB 126, is who is a resident student, who is an option student. I say if a student is in a school and they're happy to be there, they're a student. If their parents choose to drive them a distance to get there because they feel that a better education is offered at that location, so be it. We should not hold it against them that they happen to drive far to get there. Happy students mean happy parents. Happy parents mean happy taxpayers, and I'm trying to recruit happy taxpayers. What I learned is that there are several students, several families that are closer to a Class I school than their resident district; and because of our option policy, they choose to go to the Class I school. It's closer. Oh, no, but we need to get hung up on the fact that they're across that arbitrary boundary. And only because they're across that arbitrary boundary, they are option students and not resident students, therefore, not fully entitled to attend that Class I school. Let's get over those hang-ups and open it up and have access from everyone. You know, I've been reading, especially this time of year when there's transition with schools and new grades and there's a refreshing new start coming in August, and I know that Senator Raikes is rather chapped perhaps by advertising one school in the newspaper when another school might not. And I think it's a sign of healthy competition. If Banner County Schools advertises in the Scottsbluff Star-Herald for students and to attract students out to their school, so be it. Now, if they're doing that because they can gain from the state aid formula, that's our fault.

SENATOR CUDABACK: One minute.

SENATOR SMITH: That's legislative policy. I only beg that the body look at quality, especially as quality of these...the quality that exists in these Class I schools is supported by efficient operation. I have agreed from the onset that if there are Class I schools that operate inefficiently and ineffectively, meaning academically, I'm not here to support

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those operations. If they cannot operate on a reasonable cost and providing quality education, I'm not defending those. But so far I have not been presented with any convincing information that that's prevalent out there. Quite frankly, it isn't out there, from what I've seen. If we want to talk about efficiency and effectiveness, let's talk about it all across the state.

SENATOR CUDABACK: Time, Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Stuhr, followed by Senator Louden.

SENATOR STUHR: Thank you, Mr. President and members of the body. This has been a very difficult issue for many people. And as I stated when we discussed it on General File, that probably ten years ago I would have been on the opposite side of the issue, but time does have a matter of changing things. And I realize that change is very difficult. But I think this is one of the issues that we all have to look at and, again, look at the quality of education that we are going to be providing our children of the state because that is of utmost importance and the highest priority, I believe, for all of us. I will not be able to support Senator Louden's amendment. I believe that all those provisions in that amendment really say, let's just keep things as they are. Let's look at that: four miles from another school. I believe in the negotiations that we talked about the distance of ten miles, which seems very reasonable today. Years ago, as I stated, we had Class I's because of certain reasons. We had many, many students living in those rural areas. And if I ask everyone in this body to raise their hand who attended a Class I, I would say probably three...no, I'm not asking. (Laugh) I'm just saying I bet you three-fourths of the body would probably say they did attend a Class I. So we all know and we think back on those memories that we had at a Class I. But let me tell you that times have changed. We no longer walk to school. We no longer ride horses to school. We all have means of transportation that we can easily transport students ten miles from another school. I believe the negotiations have provided for some of these

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provisions so that there was protection. We're talking about local control. We still will have attendance centers out in those areas, but they will be under the K-12 system. We talked about another area that we have, I think, in Senator Louden's, two students per grade. We know in some of those, in some of the schools there may be three grades. There we're talking about six students. We know that there are some provisions because of mileage and distance that those schools that have a low number will still be there. Those protections have been built in. We talk about costs. I know that one of the handouts that we talked about on General File we looked at 80 of the Class I schools. Over half of those had costs over \$10,000. Some of those had costs up to \$39,000 per student. We are talking about providing quality education, but using our resources in the most efficient way that we have in this state. Talking about...I believe that Senator Louden also had something about student performance. Well, we know that when we have the small number that this would not be possible because if you don't have a certain number in a class those student performances are not...

SENATOR CUDABACK: One minute.

SENATOR STUHR: ...measured. So we're not looking at that provision as being a valid provision. Again, I know that these are very difficult issues. I'm disappointed that in three months here we are still back here where we started three months ago. And that usually both sides are able to come to some agreement, but it is natural that some people will never be able to support this bill and I can understand that. I can understand that. But having served on the Education Committee for a number of years that I think that this is the right thing to do at the right time. I come from a rural area. I must admit I do not have any Class I's in my district. In fact, we did what we're proposing, in our area...

SENATOR CUDABACK: Time, Senator Stuhr.

SENATOR STUHR: ...we did that 50 years ago. That's why I say the time is now. Thank you.

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SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Louden.

SENATOR LOUDEN: Thank you, Senator Cudaback and members of the Legislature. I'm sure Senator Stuhr did her consolidations 50 years ago or however many years back it was. She's got to remember she's probably got a road every mile around every section, maybe more. Maybe they're even closer than that. She also, through her district in her area, has some paved county roads. We're talking about areas out in the western part of the state where the best paved road we have is probably a ten-foot oil strip, and that isn't roads everywhere. That's just into some of the feeder areas. So we have a problem of transportation out in the western end of the state. When you talk about your cost per student, when she's talking about how many of them were paying, what, \$10,000 or whatever the number she quoted, how many of those students were actually involved in that? When you have something like a total of 8,000 students in your Class I districts, it isn't because we have a big number of students. And, sure, your cost is probably going to be considerably higher when you have to travel the mileage and have miles in there and bring teachers out into some of these areas. The question is, are you going to have teachers come out in those areas to have education for those children, or are you going to expect them to be hauled someplace for several miles? I grew up back in the days when schools were being closed out at an enormous rate back there in the late forties. Also in Wyoming the parochial schools did a land office business. In fact, I boarded in parochial schools with grade school kids that were in kindergarten and 1st grade, and that was usually the job of the older boys, was to look after the littler kids. And you'd see kids come in from these areas that were probably, especially out of Wyoming, they'd be the first graders that would come at the start of the year and they would go home for Thanksgiving, first time they'd go home. This is what we have gotten away from with our school system in Nebraska. We went to Class VI systems out in the western end of the state and they've worked quite well. And I'm under the impression there are even some down in this end of the central part of Nebraska. Grand Island, Hastings, and different areas have large Class VI districts. I don't know how many of you understand a Class VI district, but it is, in fact, a K-12 district. The Class VI

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high school district has the budget authority. They pull the purse strings. They do whatever is necessary with the budget and each of your independent autonomous Class I schools that are in that district set up their budget, and it has to go through the main Class VI district. So there are ways and we've been doing this for years. There's no reason why that same principle couldn't be worked on farther into some of your Class II and III districts where they have affiliated schools now. The same principle could be used. It isn't nothing new and it isn't that hard to work out. LB 126 isn't anything that had to happen. This is something that somebody has decided to do just for the sake of doing it, near as I can tell. There's no one that has really been for this thing. We had our LR 180 studies here, what, nearly two years ago now. They came as far west as Broken Bow. My goodness, they got pretty near as far west as Broken Bow. It's pretty near quicker to drive from Lincoln to Broken Bow than it is from Broken Bow to Chadron, so you see how far west they got with their hearings. And I attended some of those hearings, and I would surmise that out of the three hearings there was probably over 1,000 people attended those hearings. And there probably was nine people at the very most that were in favor of doing something like this. Otherwise...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...there was probably 990 people that were against it. But yet we went ahead and have come up with these projects to close your Class I systems. You want to remember schools in Nebraska have been here for way over 140 years. And this goes back to clear, like, I think you go out here and look at the mural, Minnie Freeman when she tied her kids together and hauled them back through the storm of '88. So there are traditions here and this is what you're trying to wreck. You're trying to wreck this entire tradition of the school system in Nebraska. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Brown, followed by Senator Smith.

SENATOR BROWN: Mr. President, members, those of us who believe that LB 126 is the single piece of important restructuring that

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we are going to do this year have left it to the sponsor of the bill to make discussions. And if anyone was in the mood for a joke, I would say that for some of us, that's not an entirely comfortable situation, letting Senator Raikes have that much power. But the bottom line for me is that LB 126 is a defining issue. It's not defining about whether we like Class I's, whether we think that Class I's have quality; it's defining about whether we are going to be in 2005, where our expectations about education are quite a bit different than 1885, when most of the Class I's or the concept of Class I schools was put in place. There was a time when we thought that if every child had a 6th grade education that we would be a wonderfully advanced society and we were. And it was that commitment to getting everyone to have a 6th grade education that got us where we are. We have long since given up that 6th grade education for everyone is acceptable. We have higher expectations. It's not about whether the quality in the school is going to change. It shouldn't. Parents shouldn't change whether they are affiliated and feel good about the school. It's whether our structure should follow our expectation. And our expectation is that kids should at least have a high school education. It is 2005. We don't have the same expectations. This is about restructuring. It's not about us forcing the issue at the local level. The schools won't close if there is a reason for them to stay open in a bigger structure. We need to do this and we need to do it now. Thank you.

SENATOR CUDABACK: Senator Smith.

SENATOR SMITH: Thank you, Mr. President. Would Senator Stuhr yield to a question?

SENATOR CUDABACK: Senator Stuhr, would you yield?

SENATOR STUHR: Yes.

SENATOR SMITH: Senator Stuhr, you mentioned that some Class I students were not being tested. Where did you get that information?

SENATOR STUHR: I'm sorry if I implied that they were not being

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tested. What I'm saying is that I do not believe that they are counted if...I believe they have to have so many in a class before they put those results, like, on the statewide report card.

SENATOR SMITH: Right. Right, yeah.

SENATOR STUHR: So I'm sorry, did I say...

SENATOR SMITH: Yeah. I think there seemed to be an insinuation that the students were not being tested, therefore, not accountable.

SENATOR STUHR: No, I did not mean that at all.

SENATOR SMITH: Okay, thank you.

SENATOR STUHR: I'm sorry.

SENATOR SMITH: Thank you. Now...and I'm going to try to remain lighthearted and not let my blood pressure get too high here. But Senator Brown's speech moments ago suggesting that a 6th grade education was the only thing available in these districts, and perhaps I didn't catch everything she had to say, yes, I am a product of a Class I school that went through 8th grade actually. And believe it or not, I even went on to high school. I was qualified to enter 9th grade in town, didn't have to ride a horse to town, and these Class I districts in western Nebraska actually had computers in their classrooms before the larger schools. Now I suppose that's unfair. We've heard that that's unfair and, therefore, we should take that asset and that benefit away from that context. I hope we don't go there. I hope we don't go there. And I can appreciate Senator Stuhr saying that ten years ago she probably would have supported this, even though there weren't any Class I schools back then. But her Class I districts got to close voluntarily. As the balance of needs and commitments and community support differed, they voluntarily closed. I hope that the body will allow the districts across Nebraska to voluntarily do the same. But I do want to speak to the amendment, AM1217, that has a very interesting component to it, and it's especially enlightening

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that there's opposition to it in that the dollars, based on demographics of students in the state aid formula, must follow those students. Because apparently what we have seen around the state is that a school district will receive more dollars for their students based on the supposed needs, but the dollars don't reach the location where the students go, whether it's even teacher salary or whether it is particular programs associated with the schools or with the particular students that are garnering more dollars for the district. Now we're getting sued by Omaha wanting even more dollars for certain students. Are they willing to make sure those dollars reach those students? That is a big concern. Now also in AM1217 are considerations for cost and student performance. That's because those of us opposed to LB 126 are not afraid for cost accountability and academic accountability. Those speak for themselves. We've never been afraid of that. But as we look across the state, and Senator Loudon pointed to this,...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...Senator Loudon pointed out the fact that Senator Stuhr's district, without any Class I schools, has different transportation issues. You get out into the far reaches of Nebraska and there are other transportation issues where some students even have to spend the night during the school year, during the week, if they're going to attend their resident school. There are vast areas in rural Nebraska that still don't have a school in close proximity enough that they can readily travel each and every morning and afternoon. Let's be mindful of the different needs across Nebraska. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Mr. Clerk, items for the record, please.

CLERK: Mr. President, two new resolutions: LR 225, offered by the Health Committee, and LR 226 by the Government Committee; both calling for interim studies. Both will be referred to Reference. (Legislative Journal pages 1660-1661.)

Senator Friend would move to recess until 1:30 p.m.

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SENATOR CUDABACK: You've heard the motion to recess till 1:30 p.m. All in favor say aye. Opposed, nay. The ayes have it. We are recessed.

RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good afternoon. Welcome to the George W. Norris Legislative Chamber. Senators, the afternoon session is about to reconvene. Please record your presence. Members, the afternoon session is about to reconvene. Please check in if you haven't already. Thank you. Record please, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

SENATOR CUDABACK: Do you have any items, Mr. Clerk?

CLERK: One item, new A bill. (Read LB 478A by title for the first time.) That's all that I have. (Legislative Journal page 1662.)

SENATOR CUDABACK: Thank you. Mr. Clerk, please inform the body where we were when we recessed for lunch, please.

CLERK: Mr. President, discussing LB 126, Senator Loudon had offered AM1217 as an amendment to the bill.

SENATOR CUDABACK: Thank you, Mr. Clerk. There are a number of lights on. We will continue where we left off with discussion of AM1217. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback, members. I punched my light on after Senator Fischer this morning discussed this concept that she promoted or talked about briefly on one school district per county. And she alluded to some of the

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overtaxing of administrative authority, if you will, in the Douglas County area. And I couldn't agree more. I actually put a bill in a couple of years ago that would have, if it would have passed, had us take a serious look at the possibility of moving towards a school system in the state of Nebraska which would look at a one school district per county concept. I think there's value in studying that and moving in that direction. Quite frankly, I think it's ridiculous, it's ridiculous that Douglas County, which is geographically, if not the smallest, one of the smaller counties in our state, and we got eight school districts in the county. I just think that's outrageous. I think it's ridiculous. But right now we're not discussing that. Right now we have LB 126 and it is...what I would like to see happen is to maximize and to direct our existing educational resources and to maximize them for the classroom. And I think that LB 126 moves us in that direction. I think it's a step in the right direction. I support LB 126. I would have a question for Senator Louden relative to his amendment, if he would yield.

SENATOR CUDABACK: Senator Louden, would you yield to a question from Senator Synowiecki?

SENATOR LOUDEN: Yes, I would.

SENATOR SYNOWIECKI: Senator Louden, this amendment, AM1217, was this a bill that you introduced in the session or did this have a committee hearing and so forth?

SENATOR LOUDEN: No. This is an amendment to LB 126. This came about as some of our, as I say, our common-sense committee had come together with some of the ideas and propositions that we thought we needed that we could improve LB 126, if there is such a thing.

SENATOR SYNOWIECKI: Well, thank you, Senator Louden. I was just wondering if this originated as a bill early on in the session. And again, I'm just interested to maximize directing our existing educational resources to the classroom and to lessen our administrative burdens. And that's what I want to see done. That's why I think LB 126 moves us in that direction. Thank you, Senator Cudaback.

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SENATOR CUDABACK: Thank you, Senator Synowiecki. On with discussion. Senator Fischer, followed by Senators Erdman, Flood, Stuthman, Heidemann, and six others.

SENATOR FISCHER: Thank you, Mr. President. Members of the body, earlier when we were talking about filing this amendment, and it didn't come from a bill, it is an amendment. And as I stated before, this was our first response to Senator Raikes and especially to Senator Brashear when we moved on to Select File and we were going to start a negotiation process. The eight senators that were opposed to LB 126 and were most vocal about it met and we came up with this as our first step in the negotiations. Since that time, we have...we feel compromised quite a bit. We've worked through the steps. Senator Stuhr pointed out some things in this amendment, such as the four miles clause in here, the section dealing with that, if a school district was four miles away from another Class I district that they would be able to remain open. We compromised on that. We went to ten miles. We compromised on Class I districts here, Senators. We said that if there were certain protections that we would go to all K-12 districts. And that with those K-12 districts we did want some protections that those school buildings, that those attendance centers in the K-12 districts would have protections to remain open. We compromised on that. We compromised within our own group on a number of issues. We are still not at an agreement. As I said this morning, I have a whole handful of proposals that we have received and there's always a change. Yesterday we received another one. Last night at 8:30 we received another one. This morning at 8:30 we got another one, and now we have another one as we start this afternoon. We haven't had time to look these over. I haven't had time to look at an amendment that Senator Raikes filed this morning. We're still in discussions, though, and we're trying to see where we can come to some kind of agreement on this. But at this point this is what we're offering--AM1217--because this is the first point that we are at in...when we came through with our negotiations, when we started the middle of February and negotiated in good faith, when we met at least once a week through this entire session, only to have this come up as, what I would say is, at the last minute of the session, when we're

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all probably getting a little testy, and we're working under the gun, and we have a number of bills that are very controversial that are coming up. This is an important issue. We talked about economic incentives. Schools in rural Nebraska are the biggest employers in their areas. You want to talk about economic incentives, then you leave these schools open and you leave them so they can manage and remain open.

SENATOR CUDABACK: One minute.

SENATOR FISCHER: We heard from Senator Brown this morning who entered the discussion. Earlier when we had this discussion in February and different allegations were thrown about on the floor, I pointed to Omaha Westside. And we're talking about governance, and Senator Brown talked about governance this morning and how this would lead to efficiencies and this would lead to accountabilities. And I agree with Senator Synowiecki. You know, let's look at where the inefficiencies are. And truly for the state of Nebraska, for all the people in Nebraska, where's the accountability to allow District 66 to exist in the center of OPS in the center of Omaha? Where's the accountability to the people of the state on that one? On this amendment we do have what we considered concessions. We have that the Class I's...

SENATOR CUDABACK: Time, Senator Fischer.

SENATOR FISCHER: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Fischer. Senator Erdman, followed by Senator Flood and others on AM1217.

SENATOR ERDMAN: Mr. President, I yield my time to Senator Smith.

SENATOR CUDABACK: Senator Smith, almost 5 minutes.

SENATOR SMITH: Thank you, Mr. President and Senator Erdman. I rise in support of Senator Louden's amendment and that is not to simply put a roadblock to LB 126, but Senator Louden's amendment is a very good faith effort at a compromise. And I would

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suggest that it allows, although I have to give up quite a bit, "I" meaning my district, it does allow for some give and take along the way. I'm very mindful of Senator Synowiecki's comments about resources for the classroom. In fact, I'm so mindful of that that I've introduced an interim study on administrative costs across Nebraska relating to education. Since 1970, and there's been a handout in the past on this, since 1970 we have seen the number of school districts in Nebraska decrease by two-thirds. Right now we have one-third the number of school districts than we had in 1970, but we have three times the number of administrators since 1970. Let's talk about resources for the classroom. What are the causes? I would say one cause was the state mandate that forced every Class I school to have a full-fledged administrator instead of a head teacher. And maybe those were some academic issues at the time. I'm not quite certain, but nonetheless, I'll bet it was a state mandate that forced the schools to expend more resources on administrators. But it concerns me a lot anytime I see such an increase in spending on education, but it's not reaching the places it needs to reach, primarily the students or as close to the students as possible. That's why I'm concerned when I hear about educators and the morale because of all the paperwork being piled on teachers relating to testing and other mandates, federal and state. So we're seeing more paperwork on teachers and more administration across the board. What have we gotten for it? Low morale is what we've gotten, low morale from taxpayers, low morale from the classroom teachers, those folks on the front lines of education who feel somewhat left out of the whole issue. And LB 126 will place a much larger divide between taxpayers and school districts. When we look at communities thriving around Nebraska and the school at the center concept, and then it's really...it's truly the intent, perhaps not quite the hammer of locking the doors but certainly the financial hammer, to close those buildings across rural Nebraska, the Class I buildings, and I'd ask what's next? But it is certainly the intent. I've seen it in my own district where some of the larger districts have already said they want to close the Class I schools; close, not use the facility for another reason, they use the term "close." Those were their words, not mine. And then we hear an advocate or two of LB 126 or perhaps all of them say, well, it's not going to close those

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Class I schools. I've already heard that that's the intent. I don't think we can honestly say that LB 126 is simply a shift...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...in the administration of funds or the structure. I mean Senator Brown talked about how everything needs to be a K-12 system instead of a K-6 system because we only used to care about a 6th grade education. I don't quite understand what she was talking about, but I'll give her the benefit of the doubt in suggesting perhaps that it's just a mere change in the structure of a school. But I ask you this question. If Westside School district would lose their school board, would you expect to see the same products and programs coming out of that school system if it were an OPS school board? Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Flood, followed by Senator Stuthman. Senator Flood.

SENATOR FLOOD: Thank you, Mr. President, members. And I want you all to know I'm not just talking because it is Madison County Day today. I do rise in opposition to LB 126. This is not the first time we've had this discussion, and this morning's negotiation wasn't our first negotiation. For those of you that maybe are on the fringe or may be supporting LB 126, you may wonder why we're having this trouble trying to put together deals and negotiate different interests. And that's because each one of the rural senators comes from a different position. I come from a county that happens to have a Class I cooperative of seven schools, nine total districts, but seven operating schools. Senator Fischer in Cherry County has experience with a Class VI system. Senator Langemeier has experience with a Class VI system, but a very large and high minority population in the city of Schuyler and then Class I schools out in the rural areas that do not have that many minorities. So he certainly has different dynamics involved. You have Senator Smith who, out in western Nebraska, has the traditional Class I schools out in the country, part of a Class III system, certainly a different situation. My interest in this is to find something that treats all different Class I schools fairly and

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yet is responsive to what the Class IIIs are telling us they're looking for in efficiency, the reason we have LB 126. Unfortunately, the bill in its green copy is a one-size-fits-all approach to a problem that's different by county in the state. For instance, in my cooperative, things are much different than they'd be in Senator Langemeier's district. I have a total of 319 kids attending Class I schools in Madison County. Of those 319 kids, 148 of them are residents, 171 happen to option in. There has been much discussion, especially on General File, as to whether or not these kids are a diverse population, both socioeconomically and racial diversity. We happen to have in my cooperative 17 percent minority population. Thirty percent of our students in Madison County attending Class I schools in the cooperative qualify for free and/or reduced lunch. The one-size-fits-all approach doesn't apply in the 19th Legislative District. Unfortunately, other districts have not made the decisions we've made in Madison County to cooperate and develop through the interlocal cooperation agreement a single administration for seven schools. We save money for the taxpayers in Madison County because our average daily attendance cost in the cooperative is \$7,094. That's almost, well, it is \$1,200 lower than the state average. So there are districts in this state that have taken and made the efforts to reduce costs to help the taxpayers out and provide a rural resident education. LB 126 doesn't make sense in its green copy form. It's my hope that we can try and put these shared interests together, if we can find areas that we have shared interests, and negotiate a compromise that respects Senator Fischer's area, that respects the folks in Madison County, and certainly Senator Smith and everybody else that's at the table. At times I question whether or not we're capable of doing that, but in the next day or so we're going to have to look at things that we can give up in an effort to compromise because negotiation without compromise is fairly unilateral and will not be beneficial. And we'll be back in the same position tomorrow. So it's my hope that we can resolve this as soon as possible. Thank you, Mr. President. I return the balance of my time.

SENATOR CUDABACK: Speaker Brashear, you're recognized to speak.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the

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body. 'Tis the season. We are engaged in a little facilitation and accommodation here and what will best work, I think, for the body as a whole and for certain ongoing discussions will be to pass over LB 126 at this time. And because we had scheduled a different division, we will with...and Senator Smith has accommodated this, and I appreciate that, we will simply move to the 2:30, whatever it is, division and begin our discussion of the first bill in that division by Senator Smith. LB 126 will appear on the agenda again at 11:00 a.m. tomorrow morning and will further advise you at that time. Thank you.

SENATOR CUDABACK: Thank you, Speaker Brashear. Mr. Clerk, items, please.

CLERK: Mr. President, a new resolution, LR 227, by Senator Smith, will be laid over. Enrollment and Review reports have examined LB 478 and LB 713 and report both to Select File with Enrollment and Review amendments attached. (Legislative Journal pages 1662-1667.)

SENATOR CUDABACK: Thank you, Mr. Clerk. As stated by the Speaker, we take the 2:30 item currently. Mr. Clerk, Select File, 2005 senator priority bills, the Bourne division, LB 70.

CLERK: Senator Flood, I have Enrollment and Review amendments first of all, Senator. (AM7088, Legislative Journal page 1317.)

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 70.

SENATOR CUDABACK: You've heard the motion by Senator Flood to adopt E & R amendments to LB 70. All in favor say aye. Opposed, nay. They are adopted.

CLERK: The first amendment I have to the bill, Mr. President, Senator Jensen, AM1156.

SENATOR CUDABACK: Senator Jensen, you're recognized to open. Senator Jensen is on his way. Probably didn't realize we were

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going to the 2:30 items. We will give him a minute or so. Senator Jensen, if you're in the area, please...here he comes. Thank you.

CLERK: Senator Jensen, I have AM1156, Senator.

SENATOR CUDABACK: Senator Jensen, when you get your breath, you're recognized to open on AM1156 to LB 70.

SENATOR JENSEN: Mr. Speaker, I would like to withdraw AM1156.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, next motion. Senator Smith, what purpose do you rise?

SENATOR SMITH: I had filed an amendment to that amendment. Is...does that matter?

SENATOR CUDABACK: Senator Smith, he had not opened on the amendment. He can withdraw an amendment if he cares to, and he did such. The amendment is withdrawn, so your statement is overruled. Mr. Clerk.

CLERK: The next amendment, Mr. President. Senator Jensen, I have AM1153. (Legislative Journal page 1173.)

SENATOR CUDABACK: Senator Jensen, to open on AM1153.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. And, yeah, I need to catch my breath a minute. It's kind of a different agenda that we're working on here today. And actually, I had a doctor's appointment at 2:00 that I had cancelled because of this agenda, that I didn't know about at 11:30 last night. And I also want to apologize to Senator Smith, because I'd hoped to have a few moments to visit with him about this amendment and the amendment to this amendment prior to this. And of course, he was very involved in the preceding bill, and so we just didn't get that accomplished. And I just got this amendment down this morning. And there is an amendment to this amendment that really...this amendment that is before you, AM1153, is really a technical amendment. And so, Mr. Speaker, I would really rather open up on the amendment to

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the amendment at this time.

SENATOR CUDABACK: Senator Jensen. Mr. Clerk, first.

CLERK: Mr. President, Senator Jensen would move to amend his amendment with AM1613. (Legislative Journal page 1667.)

SENATOR CUDABACK: Senator Jensen, to open on your amendment, AM1613, to AM1153.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. This amendment is fairly extensive. It's on your gadgets in front of you, and I'd appreciate it if you would happen to take a look at that. But before doing that, I would just like to say a few things about LB 70. And LB 70, as it is before you now with the E & R amendments, is an embarrassment, and it is a sham. And that's not me just saying that. That is a number of editorials that have been written since LB 70 was passed on General File. I think it was unfortunate that it did come out in the way it did. And this is a method to take a look at that issue and to address it, and hopefully come up with an amendment that...and a bill, that many can adhere to. First of all, what LB 70 says today is that wearing a helmet is a secondary offense. Wearing eye protection is a primary offense. Twenty-one and under riders must wear a helmet. Those over, if they take a training, will not have to wear a helmet. And that is very, very confusing. It's confusing to those in law enforcement. It's even confusing to those who ride motorcycles. On top of that, even to the thought of repealing the present motorcycle law, I don't know that there's been a single editorial that has introduced...or, that has endorsed the repeal of the motorcycle law...the motorcycle helmet law. Every medical agency in the state of Nebraska has come out in opposition to this repeal. Several insurance companies have come out in opposition to this repeal. Two polls done last year, one by AAA, and another one by a research institution, show that 80 percent, 80 percent of Nebraskans favor the motorcycle helmet law that we have today, because it has worked, and it has saved lives. So what does this amendment do? I'd go...I'd like to go through it section by section, so that you can see what our idea is on this bill, and also the fact that

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there is...I've gone a lot further than I wanted to, in that there is a one-year moratorium on a helmet, wearing a helmet. I'm very concerned, because I think lives will be taken because of that. But in order to come up with what I think is a good...much better bill, one that we can be proud of in Nebraska, it's at least a stepping stone, a way to go. Section 1, it creates a Nebraska Motorcycle Safety Commission. The commission consists of 12 individuals: the Chairs of both the Transportation and Health Committees, and members of the commission then are appointed by both Chairs and include representatives of, one, the insurance industry, a representative of the DMV, a licensed physician with expertise in head trauma, a representative of the Department of Economic Development, a representative of the University of Nebraska with expertise in statistics, a representative of the Department of Roads, a representative of the Nebraska State Patrol, a member of ABATE, a Nebraska motor vehicle operator's license holder, a Nebraska Class M endorsed or Class M operator license holder. And the commission would address several elements, outlined in Section 1. The commission is also by no means limited to just these items, but may expand further. Section 2 and 3 of the amendment basically are the same as in E & R amendments of LB 70. There are minor changes made simply to reflect technical changes, based on the original sections stricken from the E & R amendments. Section 2 does raise the amount going into the Motorcycle Safety Education Fund, by the same amount, however, as in the E & R amendments of LB 70. Section 3 raises the motorcycle registration fee from \$6 to \$11, the same as in E & R amendments. Section 4: This section makes a technical change to the current strategy...or, to the current statute, and an exception to the testing procedures for an individual seeking to renew their motorcycle endorsement is provided within Section 60-4,127. Section 4 merely takes this exception and moves it into Section 60-4,122, and harmonizes that exception with exceptions that are provided for in Section 60-4,122. These exceptions waive the original testing requirement for new motorcycle license applicants if, upon renewal, the rider has no motorcycle moving violations on their record. Section 5: There are significant changes here in Section 5. Currently, under statute, within E & R amendments, basic rider training is not mandatory. Let me quote from the E & R amendments to LB 70:

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60-4,127, no person shall operate a motorcycle on the alleys or highways of the state of Nebraska until such person has obtained a Class M license. No such license shall be issued until the applicant has appeared before an examiner, satisfied the examiner that he or she meets the vision and physical requirements established under 60-4,118 for operation of motor vehicle, and successfully completed as examination, including the actual operation of a motorcycle, prescribed by the director, except, except that an examiner may waive required examination, including actual operation of the motorcycle, if the applicant presents proof of successful completion, within the immediate preceding 12 months, of a motorcycle safety course or Motorcycle Safety Education Act. The statute continues on from there. Under current law, LB 70, training is not required. I'll repeat, under current law, LB 70, training is not required. This amendment requires that all first-time motorcycle applicants show that they have successfully completed a basic motorcycle training course by the time they apply for the motorcycle endorsement. Almost all senators in this body that I heard from spoke about LB 70, indicating that they feel training may be the most important aspect of LB 70. I could not agree more. When an individual comes in seeking their first motorcycle endorsement, that individual will be required to, one, meet the visual and physical requirements already established in statute; two, successfully complete an examination, including the actual operation of a motorcycle; and three, present proof of successful completion of a basic motorcycle safety course within the immediate previous 12 months, as provided under the Motorcycle Safety Education Act. What this provision will do is to require all individuals seeking their first motorcycle license or endorsement to successfully complete a basic motorcycle training course before that individual can receive that endorsement. Currently, riders are not required to receive training certificate upon receiving a motorcycle endorsement. This amendment would require...would make training a requirement. Section 6 includes an increase in the motorcycle fines, as provided in the present E & R amendments, with minor technical changes to reflect the language of this amendment. Section 7 remains the same as E & R amendments, merely harmonizing the eye protection. There are some changes in Section 8. Currently, E & R amendments to LB 70

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include secondary violation provisions as it pertains to the current helmet provision. This amendment will remove the helmet requirement for one year, for one year. Beginning June 1 on 2006, all riders in Nebraska will then be required to wear a helmet. This means that motorcycle...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...riders in Nebraska will be free to ride a motorcycle without a helmet, if they choose to, until June 1 of 2006. At that time, riders will be required to wear a helmet while riding in the state of Nebraska. Section 9 and the remaining sections in E & R are stricken, 9 through 26. These sections speak to changes in the current statutory scheme as it relates to structure and implementation of safety training within Nebraska. It really took a lot of soul searching to think that we might eliminate helmets for one year. But in order to study this issue, which I think really needs to be done--there have been so many statements about whose statistics are correct, whose are wrong, and is somebody given misinformation,...

SENATOR CUDABACK: Time, Senator.

SENATOR JENSEN: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. You heard the opening on AM1613. (Visitors introduced.) Let's move on. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. I am still trying to absorb the 15-page amendment that I've just seen for the first time. And I accept Senator Jensen's apology for the lack of opportunity for me to look at this. I'm trying to digest it. I have some concerns, in the onset, with the one year; that if we expect good information, good useful information, we need more than one year. You might have seen on the Chamber Viewer that I have proposed a five year. Now, I want to emphasize...and it's been interesting receiving some comments (laugh) from those with various opinions about the current status of the bill, about other issues and so forth.

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But I would ask you to look at my amendment that does basically offer a five-year sunset on the green copy. Although there are criticisms of the various advocates of LB 70--the groups, primarily--that, oh, they're only concerned about safety because they want a repeal, that's not true. I have never seen more well-intending folks. Yes, do they want some relaxation in the helmet law? Absolutely. I can't blame them. But they're the ones who proposed education and training requirements. I want to emphasize that. I also want to point out the handout, the yellow handout, from the Patriot-News, Harrisburg, Pennsylvania, that showed that after one year of Pennsylvania's policy that I have proposed in the original green copy, after one year, reduced number of deaths, even in a context of more motorcycles on the road, in fact, 9 percent. We're talking some pretty significant numbers here. And so we have good information there. I would say, though, in all fairness, to get a more accurate picture of Pennsylvania, another two or three years should be used. And if you look at that article, it's very interesting, because you'll see where an opponent to it, it says, it...he said, it doesn't matter what the numbers say, the odds of surviving an accident increase if you wear a helmet. Perhaps they do. But you know what helps the odds more than anything else is the safety training. Now, some concerns that I have, if I understand Senator Jensen's amendment accurately, is being able to meet the demands of the course. The...I mean, the state has engaged in providing some of the funds for the course; riders provide the rest. But we already have a waiting list for the course, those wanting to take the course, because they've heard that it's a good thing. It's...as I've probably said before, it's mostly defensive driving that is included in that, and looking ahead and preparing for scenarios that are most often avoidable. So, if Senator Jensen would yield to a question?

SENATOR CUDABACK: Senator Jensen, would you yield?

SENATOR JENSEN: Yes, Senator Smith.

SENATOR SMITH: Senator, are you proposing that every new licensee take the safety course?

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SENATOR JENSEN: Yes.

SENATOR SMITH: Regardless?

SENATOR JENSEN: Yes.

SENATOR SMITH: Okay. Have you run the numbers by DMV or any other...have you seen how other states have implemented this in transition? Have you come up with any of those?

SENATOR JENSEN: No, I have not.

SENATOR SMITH: Okay. Thank you, Senator Jensen.

SENATOR CUDABACK: One minute.

SENATOR SMITH: And I guess I am concerned that we will jam the course. Originally, I looked at this, and I think that if perhaps there were more than one year on this, in the give and take of things, there might be a little more room for negotiation. But I think that it's a little unfair to expect every new licensee to take the course. And they may have to wait longer to take the course, to a time where the relaxation of the law already expires. And it looks like this amendment does not change the effective date of the green copy. In the green copy, the effective date, I believe, is January of the coming year. So this is actually a six-month relaxation. And therefore...and half of which...or, most of which is wintertime and inclement weather. So that's very important to note. And I think I'm running out of time. I have...

SENATOR CUDABACK: Time, Senator.

SENATOR SMITH: ...more to say next time. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. (Visitors introduced.) On with discussion of the Jensen amendment to the Jensen amendment to LB 70. Senator Beutler, followed by Senator Johnson.

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SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I would certainly be willing to support Senator Jensen's amendment. But in my opinion, the most important thing is to eliminate a particular provision from the bill, which I think breeds disrespect for the law in such an obvious and monumental way that there is no way that a lawmaking body should ever put something like this into the law. When you have a police officer...let's imagine, for example, that a police officer is standing on the corner with some of these fourth graders, and a motorcyclist goes by without a helmet. And the kid yells, hey, that guy doesn't have a helmet, Officer; he's violating the law. And the officer's reply, of necessity, under this law, has to be, well, I know, son, but I can't enforce the law. I mean, grasp that for a moment. A kid looking at a police officer. They're all observing an obvious violation of the law, and the only thing the police officer can say to these young kids, who are just beginning to learn about what the law means, is, yeah, I'm the guy that enforces the law, but I can't enforce this one. That is precisely what you have in this bill right now and you've got to get it out. You've got to get it out. When you start to breed disrespect for the law like this, these kids learn, other people learn, well, maybe not all the laws have to be obeyed. We already have a problem with selective enforcement of laws, and we complain that the police don't enforce all the laws. Well, they should be enforcing all the laws. But you can't complain on the one hand that they don't enforce all the laws, and then not enable them to enforce all the laws. They can't enforce this one. So the Jensen amendment seems to me very reasonable, if for no other reason than it gets rid of that provision of the law. Yes, it allows motorcyclists not to wear helmets until June of 2006. Is that the date, Senator Jensen? But at least the law is clear. They don't have...there's no law that says they have to wear them until that point in time. And when that point in time comes, they have to wear them. But this is a unique situation. Somebody going down the street on a motorcycle without a helmet is visually in violation of the law. I mean, there's no two ways of looking at it. And yet, the officer cannot enforce the law. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Johnson.

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SENATOR JOHNSON: Senator Cudaback, members of the body, coming back to this issue again, we've been away from it a little while, but I guess I want to talk a little bit about what happened with our long discussion before. First of all, a couple of weeks ago on "Sunday Morning," a CBS program at 8:00, they had Malcolm Gladwell on, who is a psychologist, talking about his new book. It's called the Blink, decision making in the blink of an eye. What he stated is that there are people that make up their mind, and no matter how much the valid information that they are presented with, their mind is unable to absorb any of the valid information to register to change their mind. I'd recommend the book to you. I bought it. Now, in our original discussion, one of the things that I did...and I didn't do it to cast any aspersions on Senator Smith. What I asked about was his statistical training. Because that's what we've been talking about in all of our discussions. What we need to have is valid statistical information put in front of us. This yellow sheet that is passed around today might be valid. It might also be the first one of these very nice flyers that I've seen around that might be valid. It is, however, just one year. There must be 15 or 20 different studies that are done in great detail that prove the opposite of what this one flyer says. So, yes, there are valid statistics. Who presented the valid statistics? Well, the opponents to the helmet bill have these organizations: state and national safety organizations, state and national medical organizations, studies done by people such as the University of Florida for the state of Florida. Their validity was beyond dispute. Who testified at the hearing? Two members from the American Bikers...I think they've changed their name. They used to be called the American Bikers Against Totalitarian Enactments. I think they're now something to do with education. Who were the opponents? The head of trauma for the University of Nebraska Medical Center, the head of trauma for Creighton Medical Center, the AAA safety specialist, the National Safety Council representative for Nebraska, and on and on. Testimony on the floor? It was clever, with many nice flyers. The main argument was for freedom, individual rights. But there's more to freedom than that. There's...

SENATOR CUDABACK: One minute.

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SENATOR JOHNSON: ...responsibility not only to yourself, but to others. It is the single most costly injury that people can sustain. When we left the last time with a cloture vote, two people turned to me and said, what did we pass? I said, I don't know. If you are strong enough that you will vote for cloture, for God's sake you should know what you're voting about. Every newspaper article condemned the helmet bill. The cartoons were even worse. Rather than adopt...rather, let's adopt AM1613. It does concentrate on training and I think that's what we all think is the most important.

SENATOR CUDABACK: Time, Senator.

SENATOR JOHNSON: Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. Further discussion on AM1613 to AM1153? Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback and members. I am obviously not proud of where we are with this bill, the way...the state it's in now here on Select File, either. I think everybody is in agreement with that. It's not workable. It's a bit ridiculous, where we are. That's the hazards of going to cloture and voting on things, up and down, and so on, et cetera. I have some questions of Senator Jensen. I'm trying to sort through this amendment, quite honestly. Would he answer some questions, please?

SENATOR CUDABACK: Senator Jensen, would you yield to a question, please?

SENATOR JENSEN: Yes, I will.

SENATOR BAKER: I think we're all in agreement, and you said this, too, that training is where we really fall down in the state of Nebraska. We have no training requirements. And when we get done answering the questions, I'll tell you what I did last week. But for instance, I have a Class M endorsement on my license. If I go in...it's good for almost five years. What do I have to do to go in, under your amendment, AM1613, to renew

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that, if we passed...or, adopted AM1613, where I have an existing Class M endorsement? What do I have to do?

SENATOR JENSEN: If you have a Class M endorsement on your license, you don't have to do anything.

SENATOR BAKER: Okay. But if...when I go in to renew it, though? But I have to wear a helmet, right, other than this one year?

SENATOR JENSEN: Well, this one year, until we have the study. I'm willing, absolutely, to live with the results of the study, whatever that comes back. If that study comes back and says, we don't need helmets anymore, training is working so good, I'm willing to live with that. So I'm putting everything onto this study and its conclusion and what it tells us. And so I'm willing to go there.

SENATOR BAKER: Okay. That helps me. I have to admit to the body, I have been threatening to do this for a while. I had a motorcycle in high school and college, and I sold it a long time ago. I won't tell you how many years ago. But I got the bite...I got bit the other day again, and said, I need a Harley, or need some kind of bike. Went and took my test last Friday, and I passed my test. I got on this bike, and I hadn't been on a bike, I have to admit, for a long time. And it was a big bike. And I passed that test, but I'll tell you what, I wouldn't want to take off riding right now, especially with a passenger on there, without some training, just to go out myself. I would...I won't do it. There may be a bike here in Lincoln; I'll probably trailer it home, even though I have that endorsement. And I passed it. It's in my pocket. But I want to get...I would prefer to get back to some sort of an agreement where we're back towards the green copy here. The training, to me, is what we're really falling down with in the state of Nebraska. We...and I'm not going to throw specific figures out here, but we have a problem with fatalities, and no more bike riders than we have license in Nebraska with fatality rate per 10,000 registered...or, 10,000 endorsed...Class M endorsements. We have a problem, and it's a lack of training. And I look around at the other states. And I have, as I as said on General

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File, I have family members that live in other states, that have taken this course. The next question I would have of Senator Jensen is, if everyone wanted to go take this course...I checked on it. I'll be honest with you, I have the application form here in my hand. These classes are full. And they're offered here at Southeast Community College. I don't know how far down the list they were full. But I couldn't get in. What would we do, say, in western Nebraska? We need to get these things up to where we have training courses out there. How long would you give us to take this course?

SENATOR JENSEN: Senator Baker, that's a reasonable question. And I would certainly be willing to work, if there is...if you can show me that we need additional time, that we can simply extend that time for that training period. I do want to make one mention, and that's that LB 70 did not add one additional training hour to the present bill. So...and I know training is important to you. I even have a copy of the McCook Gazette, where you wrote in and said it was important. And that's one of the reasons why I put it actually into this amendment.

SENATOR BAKER: You got to be careful what you say to whom, I guess.

SENATOR CUDABACK: One minute.

SENATOR BAKER: It might show up (laugh) in the Gazette back on the floor here. But one of my concerns of the rural area is, we're not going to...we don't have these courses available out there every weekend. And these are basically every weekend all summer at Southeast Community College. We don't have those out there in western Nebraska, I'll be honest with you. And I...it concerns me, if we're going to require them, then we better have them offered so we don't deny these people the right to take them. And they're not...they're expensive. Twelve students per class. Tuition is 150 bucks. You're not going to take these just on a whim. So I'm more than willing to work with Senator Jensen, Senator Smith. What we have here is, and I agree with Senator Beutler, it's unworkable. It's a bit ridiculous, to be honest with you. But that's where we are. And we'll fix this thing so that we can make it workable. And I'm a firm believer

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in education in this, and absolutely insist that we have that. But part of that trade-off, that compromise, the carrot we're going to use, if you take this course then, yes, you do have the option maybe of going without a helmet. I'm not going to ride without a helmet. But there are people out there that will. So...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...what I want to do is try and make this as workable as we can, Senator Jensen's proposal. And I haven't talked to Senator Smith. I'm still trying to digest it. But it looks like something we might be able to make do. And I'll be more than willing to work with Senator Smith and Senator Jensen on this, and get it done. I have one hesitation here when I make that commitment. My committee has me about loaded to the hilt with studies and task forces and things already, and I don't know whether I can handle one more commission here, and it seems like the Chairman of this committee has to be the one leading the charge. And I'm not quite sure I have enough time. But if, I guess, it's thrust upon me, I will do it. So thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Baker. On with discussion of AM1613. Senator Byars, followed by Senator Smith.

SENATOR BYARS: Thank you, Mr. President, members of the Unicameral Legislature. Thank you, Senator Jensen. Common sense. Senator Jensen, your amendment makes sense. You know, in the health area, in the education field, in ag, in water issues, in almost everything we do within this body, we find a year is adequate to gather information, empirical information, studies that are accurate to make recommendations back to the standing committees of this Legislature, who in turn recommend changes in the statute or new language, new statutes to be put into effect as good public policy. I...and I just don't see any reason in the world why this matter should be different. Why should we need two years, three years, four years, five years, when we can gather information that's out there, that's accurate? And as Senator Jensen said, and I will be...I will stand here and go on the record as saying the same thing; this

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comes back and it says that we as a legislative body should be doing away with motorcycle helmets, that this is what the evidence says, then I'll be the first one to go on record and support abolishing helmets. I just can't imagine that there's anything here that should be offensive to anyone. In actuality, I mean, it is...it's horrible, to me, that we give up a year of individuals not having to wear their helmets in order to compromise to get to this point, able to get a committee, to get a study, to be able to bring information back that's appropriate for this body. I just think it makes tremendous sense. And we do it in every other sector of the business of this body. And I think it just makes all sorts of sense to do so. Senator Smith made a point, and realistically so. I have no reason to argue with what happened in the Patriot-News as far as Pennsylvania. But I think we've all received information from what I consider reliable sources--Senator Smith might not--but from AAA Nebraska, and from Nebraska Safety Council, that shows that deaths in several other states where they have repealed motorcycle helmets have gone up. And that would be both in Iowa and in Louisiana. And I think we can take...there's two to one. I think we can take tit for tat, if you will, of showing exactly, if it's accurate, the same thing that what's being purported as being accurate as far as Pennsylvania is concerned. So this is why we're asking for the one-year study. Let's get the evidence. And we can do it in a year. Motorcycle riders then don't have to wear a helmet for a year. We then, at the end of that time, introduce legislation. If we need additional education...and I really believe in education. If you look at Iowa, they have required education courses. And we haven't talked about that. Are they enough? Who knows? But anyway, I would yield whatever balance of time that I have to Senator Jensen.

SENATOR CUDABACK: Senator Jensen.

SENATOR JENSEN: Thank you, Senator Byars, and thank you, Mr. President. Certainly, if the training becomes a problem and there aren't enough classes that people can participate in, I'm certainly willing to look at that issue. I'm willing to extend more time. Perhaps we can do something...

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SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...in between, while you're waiting for that training. Certainly, perhaps even a helmet requirement at that time. But it's more than a helmet. We do want people, once they get on that bike...and I'll tell you, there are some mighty powerful bikes, anymore. But once they get on that bike, they know what is being done. You know, last Saturday, I'm out on West Center Road. And on West Center, there's a Hooters nearby. That's a restaurant, I understand. Anyway, I'm headed west. I look across the street. Here is this motorcycle, doing a wheelie. back tire only, front tire way up in the air, for a block and a half, in front of Hooters, showing off. He had a helmet on. (Laugh) But I'm thinking, my goodness, there's no law that we can pass that would allow such an activity. But...and we don't want that. But what I do want is, I don't want people...

SENATOR CUDABACK: Time, Senator.

SENATOR JENSEN: ...getting on bicycles needlessly and being harmed. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Smith, followed by Senator Jensen.

SENATOR SMITH: Thank you, Mr. President and members. This is a good experience. Good legislative experience, Senator Jensen, Senator Beutler, Senator Byars, and others. I'm trying to sift through all this information. And I think we're making some headway, but I do have some concerns. And...now, Senator Byars used the term "abolish" helmets. Senator Byars, would you, in a lighthearted way, answer a question?

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: I certainly will. I'm not aware I said "abolish." But if I did, I did.

SENATOR SMITH: (Laugh) Okay. I want the record to reflect that at no time have I ever proposed to abolish helmets. And

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now, I know that some activists behind the glass, who disagree with me on this, have characterized the issue in a number of ways that would bring credibility into question. But now, when you say that you...after the study gives information that's useful and relevant, at what is your threshold to be more open to relaxing the helmet law?

SENATOR BYARS: The threshold is that if the study comes back and it says that helmets are not protecting people's lives and protecting them from injuries, that they're not a useful tool in preventing that, then I think that's...then I'll say, yeah, okay, then I agree with you that we relax helmet use and we provide more education, if that's what worked out with appropriate legislative committees, which I would be supportive of. And I think that would be fair.

SENATOR SMITH: Okay. Thank you. I want the record to reflect that...and especially after Senator Beutler's prior comments. And I appreciate his efforts on the issue. And I can understand his concern about the secondary enforcement. But I do want to emphasize the fact that we have secondary enforcement of the seat belt law. Now, you may or may not like that. I know that Senator Byars doesn't like that. I've decided to live with it. I have not sought to repeal that. But Senator Beutler's comments earlier could be revised, cross out "helmet law" and put "seat belt law" secondary offense. Now, the secondary offense, as I've said in the past on seat belts, has bought, if you will, an 80 percent compliance rate, 80 percent. And I know that that's not enough for some. I'm comfortable with that. I think that law enforcement has better things to do with their time than pull someone over for not wearing a seat belt. I believe that an important part of this discussion should be consistent treatment of citizens. The rule of law is such that we have order in society, and that everyone should follow that. Now, we all have different activities in life. And there...when it comes down to pure politics that sets the law, sure, there's going to be some discrimination. That's unfortunate. I do not want to promote that. But I think that motorcyclists, as they are currently treated in law, are highly discriminated against. And especially when there's the criticism of the secondary enforcement of the seat belt...or, of the helmet law. It seems

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that everyone is happy, or enough people are happy, with the secondary enforcement of seat belts.

SENATOR CUDABACK: One minute.

SENATOR SMITH: But what disturbs me greatly...and I see there's furthering of the comments from the AAA. Their lobbyist came to the hearing and compared an unhelmeted rider to a drunk driver. That's unfair, that is condescending, and does nothing positive for the public policy debate. Please keep that in mind, and look at all the information with an open mind. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. On with discussion of the AM1613. Senator Jensen, followed by Senator Chambers.

SENATOR JENSEN: Thank you, Mr. President, once again, members of the Legislature. I do have before me a sheet on motorcycle rider courses. And by the way...by the way, and I don't know, we're going to find out just what the lineup is for these courses. But there is one, the Western Nebraska Motorcycle Training, at Gering-Scottsbluff area, Hastings, Columbus area, at the Central Community College in Hastings. And by the way, those Hastings classes run...they're a three-day class, from 6:30 to 10:00 Fridays, from 8:00 a.m. to 5:00 p.m. Saturdays, 8:00 a.m. to 4:00 p.m. on Sundays. And there's classes all the way through, April 1, April 8, April 22, April 29, May 13, May 20, May 27, June 7, June 10, June 17, June 24. So they go absolutely all the way through at the community college out at Hastings. In the Lincoln area, Frontier Harley-Davidson...well, wait a minute. There's also a...skip that one. In Norfolk, at the Northeast Community Colleges, there are classes, and the extreme northeast area, at Western Iowa Technical Community College at Sioux City. So there are...and in the Lincoln area at the Southeast Community College, also. So there are a number of classes that are out there where people can take training. Like I said, I really do believe that, from what I picked up from the body, was that most of the individuals, most of the members, thought that training was such a vital, important thing in motorcycle safety. And so, with that, I think to pass a law that we do not increase that training, particularly,

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particularly if you're looking at removing of the helmets, so I'm willing to look at that. I'm also willing to work with Senator Smith and Senator Baker, if we can come up with something acceptable and move this bill along. Like I said, I'm willing to extend that training time if we need to. I don't want to unless we need to. But we can very shortly here find out how busy those classes are, if there's a tremendous lineup for them. Willing to go one year without a helmet to look at that issue. That is something I never thought I would say before. I'm willing to do that, however. And if we can work something out here, I think we're fairly close, working with Senator Beutler also, to maybe something that would be acceptable to the whole body. And so I just would encourage you to take a look at this amendment as to what it does, and then move from there. The study is very, very important, and I'm willing to live by whatever conclusion that study comes up with. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Chambers.

SENATOR CHAMBERS: Mr. President, once again, I have to be the bad guy. I know what Senator Jensen is trying to do, because he said what he's trying to do. I've got to get my glasses, so let my time run. When I look at his proposed amendment...first of all, I'm opposed to it. If the Legislature is going to take the position that helmets ought to be worn, you cannot have a period during which people are going to be allowed to kill themselves, do all of the things that we have been told will happen if people ride without a helmet. There is no study needed for any purpose to resolve this issue. Everybody is trying to save face. It reminds me of a passage from George Bernard Shaw, where he said this scientist took a mouse and cut the mouse's tail off, then that mouse's offspring had their tails cut off, and he did this through ten generations of mice, and he finally concluded that an accidental removal of a mouse's tail will not affect the genetic makeup of the mouse so that its offspring will be born without a tail. It didn't take a study to do that. What is the study going to determine, other than what has been determined by countless studies? But let them go ahead, play in the sandbox. That's what this is about--saving face for Mr. Smith, who's on his way to Washington. Let me read

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something from this. On page 1 of Senator Jensen's attempt to try to bring some peace and harmony, starting in line 7: "The commission shall consist of the Chairperson of the Transportation and Telecommunications Committee of the Legislature and the Chairperson of the Health and Human Services Committee of the Legislature and ten individuals appointed by both chairpersons." What does that mean? Does that mean that each of them appoints ten? Or that both of them must agree on every person? What does it mean to say they shall be appointed by both chairpersons? That's ambiguous. When you list the number of people, and the ones who are to be included, there's no attorney present, an attorney who specializes in personal injury. But all these others, I think, were probably just taken out of a hat so you could make it sound like a plausible lineup. On page 14, beginning in line 23: "For purposes of this section, specifications and definitions for eye protection shall be determined by the Nebraska State Patrol." I think that's giving the State Patrol too much authority, and it borders on an improper delegation of legislative authority. The Legislature should define the words on which penalties will be based. Let the Legislature define what this eye protection means, and then let the State Patrol come up with specifications of the types of implements or devices that will meet the requirements of what the Legislature defined as eye protection. This is a valid...I meant, a valorous attempt to bring a silk purse from a sow's ear. And it's not going to work. If this is adopted, then where do you think you're going to go with the bill? I already told you that I'm opposed to it now. I've got to punish Mr. Smith. That's Senator Smith, but keeping with the Mr. Smith Goes to Washington reference. And the more I fight it, the better his chances are out there in that vast district...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...in which Senator...I meant, Congressman Osborne said he does a lot of roaming and rambling around in. So while he's roaming around out there in the 3rd District, he can say, I fought Senator Chambers. I fought the law, but the law won. But I fought him. Adopt this amendment, I'm going to fight the whole bill, anyway. Don't adopt it, I'm going to fight it. But it will take me a while, because other people

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have amendments. A few minutes ago, I saw the brain trust back there, heads huddled together, whispering and working out something. I wonder if they'll be as successful as those who were working on LB 126 today. Oh, I'm enjoying this so much. People are having an opportunity to learn about the real dynamics of legislating. And they're going to see it's not as easy as they thought when they watch somebody who makes it look easy. Those who make it look easy are those who put in the amount of time and effort that it takes to master the system enough to make it look easy, when in fact it's very complex and difficult. I need to turn on my light again. But thank you, Mr. President.

SENATOR CUDABACK: Time. Thank you, Senator Chambers. Further discussion on the Jensen amendment to the Jensen amendment? Senator Foley, followed by Senator Redfield and others.

SENATOR FOLEY: Thank you, Mr. President, members. I'm going to manage to make Senator Smith and Senator Jensen both mad at me, all within one speech. I don't like LB 70. I'm going to vote no. I don't like the Jensen amendment. I'm going to vote no. There you go. Once again, Senator Chambers and I see eye to eye. (Laugh) This past weekend, a friend of mine was out riding his motorcycle, and he was involved in an accident. And he has a wife and a young daughter, two years old. And the story has a happy ending of sorts, because he managed to hobble away with only a broken ankle. But it certainly could have been much more serious. His bike slipped on some gravel, and down he went. And it just brought home one more time the seriousness of what it is we're talking about here. I don't like Senator Jensen's amendment. With Senator Jensen's amendment, you take the helmet off for a year or so. I don't want to do that. Study commission, that might be okay as it is. The training requirements, well, maybe; maybe we can do some more on training; probably some benefit there. But I don't like the idea of taking those helmets off. I heard this bill before the Transportation Committee. I reviewed the evidence, and there was substantial evidence presented to us and it all points us in the same way. If you take those helmets off, you're going to have more fatalities, more critical injuries. We've had a helmet law for years. The law works. I don't want to tamper

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with that. I'm going to vote no on LB 70, and vote no on Senator Jensen's amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I supported LB 70 when Senator Smith introduced. I thought that it had some practical applications. One of the things it said was, if you want to take off your helmet, you're going to have to take a training course. So I thought that there was going to be a carrot in order to encourage people to go out and get some training. One of the concerns I had when the amendment was adopted on LB 70 earlier is that in fact the carrot went away, that there was no reward for taking the safety training course, because in fact we were still going to require, by law, everyone to wear a helmet. I've heard from constituents in my district; they want to take the helmets off. I've heard from others who say, you know, even if the law changes, I'm going to wear my helmet because I think it's a good idea. But I'm an adult, I'm an American, I ought to be able to choose. So I thought Senator Smith had found a good compromise in giving that carrot. Senator Smith...or, Senator Jensen is trying to run a trial run. I don't think that's a bad way to go. I think that I can support a study. I can support a trial run. Whether one year is enough, I'd be open to looking whether that should be longer. But one of the things that I think is necessary if we're going to do a trial run is that it should be a trial run that looks like Senator Smith's original bill, which says, if you want to take the helmet off, you're going to have to take a training course. Otherwise, we're going to be comparing statistics of people without training, riding without a helmet, and seeing if in fact the accident rate decreases. I don't think that's a fair comparison. So I'm hoping that whatever agreement is worked out will return us back to the elements that Senator Smith had offered us in the original LB 70 during the study period, saying you can't take the helmet off unless you take the training. And then, whatever time frame the Legislature wants to agree to, I'm fine with that. It can be longer than a year, and I'll support that. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Baker,

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followed by Senator Byars.

SENATOR BAKER: Thank you, Senator Cudaback. I think we're making progress here. And I still...I don't see Senator Jensen now, but I had some questions. I'm going to reiterate what I said earlier. I think...and I...with Senator Redfield, the training, to me, we need to get that in here. And that was...the carrot that we offered was, if you take the training course, you can go without your helmet if you believe that's what you want to do. And we've drifted a little bit away from that whole concept. I'm not quite sure what Senator Beutler and Senator Smith are working on here. But I'm willing to participate in this as a part of the study. I know Senator Chambers raised a technical question. Looks to me like both; would both appoint ten people, is what it looks like, Chairman of Health and Human Services, and Chairman of Transportation and Telecommunication. That's an issue we can work out. And what that shows us, I don't know, where we'll come...what that study might...where it might lead us. But when we advanced this bill out of committee, the green copy, I felt very comfortable with it. It was the old carrot and stick approach. If you want to ride without a helmet, we're going to require that you take the training course. And I understand the discussion we've had in the past on General File, that we should make it mandatory to take the training course. I understand that. And maybe that's where we'll go. It could be. But this will give us some time. Senator Jensen's amendment will give us some time. My biggest concern right now...and he read off some places we can take these training courses. There was Western Community College, Scottsbluff, I don't know about the Sidney campus, whether it offers it out there, and Hastings. And there's a big gap between those places, and it happens to be my legislative district, and Senator Pederson's, and so on. I don't know how we're going to address that. Perhaps we can get the community college...Mid-Plains can offer some courses, get set up to do that, I would hope so, so we could offer it, say, in North Platte, McCook, and maybe Valentine. Because, number one, as he said, it's a three-day course. You don't just take this thing and do it in a day. It's three days. To be away from home for three days, it's expensive. It's \$150, I believe, at Southeast Community College here in Lincoln. And it's

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intensive. You don't just do this on a whim. So I want to make sure, if we're going to put this training course as a requirement, we have it offered across the state. And that's, I think, what they're working on. And I hope we can get this worked out as we progress through the debate here this afternoon. I still don't see Senator Jensen. So I guess I will stop at that point. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Byars, followed by Senator Smith.

SENATOR BYARS: Thank you, Mr. President. I don't think probably this is the time in the debate, really, that we start getting back into the battle of statistics. But I feel it's important. I did allude to a couple of communications that I had received relative to issues in several other states, and the repeal of motorcycle helmets, and what's happened in those states. And I did feel it was important that we did at least keep that in consideration as we're looking at this matter. And I think as you do look at the amendment, at least...and when Senator Jensen gets back, maybe he can spend a little more time on it. But I don't think there's anything in there that...I think it says, if you're going to ride a motorcycle, you're going to need to have some education. And I would hope that that's something that we will maintain after a study. And I hope that's what the study tells us. But as I told Senator Smith, and I was sincere, if it's proven to me, with the compilation of evidence relative to these issues, that we don't need motorcycle helmets, that it doesn't make a difference, then okay. Now, I've been proven wrong, and those of us who are advocates for public safety I'm sure will back off of that. But in a communication that I received from both AAA Nebraska and from the Nebraska Safety Council, both refer, as we have talked about Iowa, particularly in their repeal, statistical information which has just been released within the last two weeks, on May 5, 2005, by the Iowa Department of Public Safety. In Iowa, motorcycle fatalities have nearly doubled in the last five years, with an average of more than 40 motorcyclist deaths reported each year. And in Iowa, nine in ten motorcycle fatality victims were not wearing a safety helmet. And this was reiterated and referred to in a publication that was sent, and I

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hope it was sent to everybody, but at least sent to me, by the Nebraska Safety Council. In addition to that, both of these communications refer to the state of Louisiana. And after the state of Louisiana repealed their motorcycle helmet law, their motorcycle fatality rate jumped 74 percent. And using the language that they use in the Nebraska Safety Council to quote, they were so appalled by this, they reinstated their helmet law this year. I think these are important facts, and I look at them as facts. I don't think these people have anything whatsoever to gain by asking motorcycle riders to wear helmets or appropriate eye protection. There's...they have nothing to gain by this. As physicians, surgeons, nurses, trauma professionals, they don't have anything to gain by this. They actually are promoting a loss of business. And so I don't see why they would distort the facts just to try to make themselves look right. But I'm willing, and I hope Senator Smith is, too. It's all Senator Jensen is asking. Let's study this for a year. Let's look at the facts. Now, I think if the other side is as open as we are, if they're open and that conclusion comes back that you should be wearing safety helmets, are they willing to also say, yes, we'll support that, let's leave the law the same, let's increase the...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...let's increase the safety measures for riders in the state of Nebraska by requiring education? And I would hope that they would say, yes, we're amenable to that. We're willing to give, those of us who feel that this is an important safety measure, and I hope that they feel exactly the same way. So I don't see anything about Senator Jensen's amendment that I can't live with. I'm like Senator Foley. I would go back to the...get rid of everything and stay the way we are and add some education. But you know, we aren't at that point. So at the very best, you know, we ought to bracket LB 70 the way it sits, as Senator Smith and Senator Baker have said itself. But let's try to move forward. Let's try to get something positive out of this. And I think an appropriate study is where we should go. And I thank the Chair for the time.

SENATOR CUDABACK: Time. Thank you, Senator Byars. Senator

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Smith. And this will be your third time, Senator.

SENATOR SMITH: Thank you, Mr. President. Would Senator Byars yield to a question?

SENATOR CUDABACK: Senator Byars, would you yield to a question?

SENATOR BYARS: Yes, I will.

SENATOR SMITH: Thank you, Senator Byars. You cited the AAA numbers here. And you said that it was a motorcycle fatality rate, or you quoted her in the rate jumped 74 percent. Now, was that the actual numbers, going from, let's say, 10 deaths to 18 deaths, which we've seen similar growth in the numbers in Nebraska, or are you talking the number of fatalities per 10,000 registered motorcycles?

SENATOR BYARS: Senator Smith, I don't know.

SENATOR SMITH: Okay.

SENATOR BYARS: And that's what I said. This is...

SENATOR SMITH: Okay. Okay, that's all I...

SENATOR BYARS: ...I'm giving the information...

SENATOR SMITH: ...that's all I wanted to know.

SENATOR BYARS: ...that was given to me. And this is why we need to study these numbers for a year. As I said, we can trade numbers and who's good and who's bad back and forth and based on what information. But we need people to look at the actual facts, and then let's know. And I...you know, I would hope you'd be willing to do that also.

SENATOR SMITH: I couldn't agree with you any more. But we need to take a deep breath and make sure that all of these numbers are accurately portrayed, consistently applied, and set emotion aside. And I think we can come up with some good policy. But when Senator Beutler...or Senator Byars says that AAA and other

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advocates have nothing to gain, I'll also tell you that they have nothing to lose. The folks who have a positive viewpoint towards LB 70, do they have something to gain? Yeah, because they've lost a lot over several years. So let's continue this discussion and hopefully arrive at something that...I've already proposed, at the five-year period, a point that is far less than in perpetuity, as the current version of LB 70 talks about, with regard to the secondary offense. But what I want is good, useful information, not half of a riding season here and half of a season there. Let's come up with good information, because I believe that we will gain more. And I'm not even sure if we'll get an accurate economic impact study with the relaxation for a...well, I know we won't in a one-year period, but even in a five-year period. Because you have to get the reputation that you're welcoming motorcyclists, and we won't probably hit that point with a temporary relaxation. But we need to welcome people into our state, regardless of what vehicle they're on, or riding in, because...I mean, if you look at large vehicles, let's say an SUV against a Yugo, the SUV is going to win in a regular accident. Does that mean you ban SUVs? And that's not even a consistent issue with the helmet issue, because we're talking about an unhelmeted rider, at worst case scenario, has a higher price tag on the hospital bill because of the helmet, or no helmet. But let's look at everything. And Senator Foley doesn't want to change at all. He kind of ramped up a little rhetoric there, and I told him I would give him some of my time, perhaps, but I'm not sure I want to...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...endure all that. (Laugh) Again, let's look at all the information, set a motion aside, so that we can come up with good public policy that can grow our economy. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Chambers, followed by Senator Mines.

SENATOR CHAMBERS: Mr. President, members of the Legislature, this is going to be a contentious issue, whenever it comes before us. Generally, when I oppose a bill, I oppose the bill.

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As I look around this floor and I see different groups of senators huddling, discussing, trying to arrive at a consensus--even though it is one that turns out to be nonsense--that, in itself, is something positive, if you put the right spin on it. On this bill, I will not put a speed bump in the road which is so large that it will stop all action. If the Legislature decides, after all of my sage counsel, to put together a conglomeration of chaotic incoherence, I'm going to let the Legislature do that. I'm not even going to talk about the poor drafting that I've found in Senator Jensen's amendment, in addition to the one example that I pointed out. If they want to--by "they," I meant the ones who support this bill--want to have provisions that could constitute an improper delegation of legislative authority to the State Patrol, let them do it. They can read, and they ought to read. Whether they have read or not, if they somehow cobble together what they call a compromise and they can get 25 senators, without my vote, to support it, let them. I'm not going to offer an amendment to this bill. I'm not going to put a motion on the bill, but I will comment from time to time, if amendments are offered. It is peculiar to me that people can stand on this floor and say with such certitude that wearing helmets mitigates injuries, the seriousness of injuries, and in some cases may prevent injuries, in some cases may prevent death even if a serious injury to the head results, then say, but as responsible makers of public policy, license will be given for a certain number of months for all of this carnage to take place. That is being agreed to, in order to establish what they call a compromise. What does the word "compromise" mean? And once you determine that, what is being compromised as a result of this compromise? What is it? I'm not going to determine it. I have my opinions. But I'm not going to try to help this bill. I just want to put some things on the record, so anybody who would take the time to consider what was before us on the floor before this compromise was adopted, can see that I had no part to play in it. (Laugh)

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I'm aware. You know, Tyrannosaurus rex might look at some beavers chopping down saplings and constructing dams to obstruct a little stream and see their little chests

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swelling with pride, their little choppers gleaming, and every now and then their elation would take the better of them, and with those little flat tails they would just slap that water, pow, because they have really done something. And the Tyrannosaurus rex would just shake his head, open his mouth, and make one good mouthful out of all of them. But fortunately, there are no little beavers here, and there's no Tyrannosaurus rex. But I think they should be proud of what they're cobbling together, because they will have done something. And I'm waiting to see what that compromise is going to consist of, and I want to see who the fashioners of the compromise will be. And if they can persuade 25 members of the Legislature to go forth,...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...I'm not going to stand in their way. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion. Senator Stuhr, followed by Senator Baker.

SENATOR STUHR: Thank you, Mr. President. I would give my time to Senator Smith, if he would like it.

SENATOR CUDABACK: Senator Smith, is he on the floor? Senator Smith. Senator Stuhr gave you her time, if you care to use it.

SENATOR SMITH: Thank you, Senator Stuhr and Mr. President. I want to make sure that, as we move forward with the safety training issue, that it is sustainable, applicable, and otherwise. And I'm sensitive to the Jensen desire. There's some back and forth there that I hope we can arrive at a decision that is workable. In the beginning of this journey that I've embarked upon, I looked at the Jensen concepts and it was not sustainable with the existing infrastructure, or even with the increased infrastructure. So that's why I had to make some changes, but the fact is, I want to make sure that that carrot is out there, as Senator Redfield characterized, to take the training. It has worked in other states. I go back to the Pennsylvania one-year point, and I think to get a true

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picture--even though I like the picture that Pennsylvania has now--to get a truer picture of the impact, you need more than one year. But Pennsylvania has done very well with our green copy of 21 years old, protective eyewear, and the training course. And they've seen a reduced number of deaths, number for number. I'm not talking rate versus actual numbers. Actual deaths went down in the increased context of the number of bikers on the road. Motorcycle registrations--the best reflection of the number of motorcycles on the road--went up 9 percent in Pennsylvania. They still saw a reduced number of deaths, even in light of the relaxed helmet law. So I think we can head in the direction that accommodates personal freedom, it accommodates the safety training, and we can come up with some good policy. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. On with discussion. Senator Baker.

SENATOR BAKER: Thank you, Mr. President and members. We are working on this, and we are making some progress. We need a little time here, and I think, if we can all agree to it, maybe we will have to let the Bill Drafters have some time, and work with the Speaker and bring this back later, so that people aren't hit with a ton of bricks. What we're trying to do is look at the...clarify some language in the amendment that is before us now, as to the appointment of the committee members, what their duties will be. We're also trying to clarify with DMV. This bill...or the amendment, as we have it before us now, provides for some considerably higher increased fees for motorcycle endorsements, or the motorcycle license and so on. That's going to require some time to get DMV to gear up to get some additional courses offered, the various entities. And it looks like community colleges are a popular way to go, so I hope somebody from Mid-Plains is out there listening. Get ready, because I think we're going to need a motorcycle training course offered in the North Platte/McCook/Valentine corridor there, someplace in there, some...obviously, between Hastings and Scottsbluff. And I...from...judging from the popularity of the course down here, I don't think they're going to have any lack of takers, especially if it's a requirement to get a motorcycle endorsement. So we're working on this. Part of what we're

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working on, as I said, is the training aspect of it, and if the course is not available, how do we allow people to go ahead and get some sort of provisional operators' permit for Class M endorsement. And the language is a bit difficult to work out, but we are making progress. And I would ask Senator Byars a question. He's down there working on his computer, but I would certainly like to ask Senator Byars a question, if he'd respond.

SENATOR CUDABACK: Senator Byars, would you...

SENATOR BYARS: I will respond.

SENATOR BAKER: I think everyone in this body is in agreement that the education is a big part of what we have as a problem. I think we'd be irresponsible to not try and address the education issues. My question of you would be the study--I think you said it was Louisiana; was it Louisiana? Do they have a training requirement? I don't have the information you have and, to be honest with you, I was distracted when you were speaking. Was it...

SENATOR BYARS: And, Senator Baker, that's a very appropriate question, and I don't have the information. And this, as I said to Senator Smith, is the reason why we need this year study, to take the questions that we have, very appropriate questions, and information that very appropriately should be part of the study, and use it. But I don't have that information.

SENATOR BAKER: Okay. That's fine. And you're right; that's why we need to take a look at this. I'm going from memory here, but I know Iowa doesn't have a mandatory helmet law, and I'm not sure what their training requirements are, whether it's what we call the ABATE course, or what it is. Colorado I am more familiar with. They will allow a rider over 21 with the eye protection, I believe is the way their statute says, to ride without a helmet if they have taken the training course. And I believe that training course is the ABATE course. Yes, Senator Byars, do you have some additional information?

SENATOR BYARS: Senator Baker, the information that I have on Iowa's motorcycle rider education program, that it is a 15-hour

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course: 5 hours of classroom study and 10 hours of range activities. I think in previous debate we had a 40-hour number, and I think, again, that illustrates the need for us to get appropriate information.

SENATOR BAKER: Thank you for that. I knew they had the course; I didn't know what it was. Now this one--I'm going to have to add these up in my head--but I think it's what Senator Jensen was talking about. From Friday, it's 6:00 to 8:30, so we have 2.5 hours; and then Sunday, it's from 8:00 a.m. to 4:00 p.m., so we've got another 16. We've got 18.5 hours required in this course. I don't know how much of it is on actual writing, or how much is classroom,...

SENATOR CUDABACK: One minute.

SENATOR BAKER: ...but it appears, from the information I have, and this is through Southeast Community College, it would be a 16.5 (sic) hour course over three days' time. So these are extensive training courses that we're proposing here. It's not something you take lightly. So my concern, representing a very rural area, is that they're available without too much inconvenience to my constituents, and I'd be one of them. I'd be taking. I don't want, particularly, to have to go to Hastings for what would amount to two overnights and three days' worth of course, and have to go 150 miles or more to take the course. So that's something we're going to have to work out, and that's part of the problem we're running into with drafting the language here, is how, if the course isn't available on a reasonable distance or time frame, how it is we'd handle that for someone who was willing to take the course. And I do know that it's hard to get into some of these. They're booked full for quite some time down the road. So with that, I think I have a few seconds left, I'd simply return them to the Chair. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Baker. (Visitors introduced.) On with discussion. Senator Howard, followed by Senator Mines.

SENATOR HOWARD: Thank you. Thank you, Mr. President and

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members of the body. And thank you, Senator Foley, for your comments. I appreciated that. I thought you'd be interested in hearing some additional information. This starts out, "Players contract for bids riding a motorcycle. Browns' tight end Kellen Winslow II sustained internal injuries and complained of chest pains after he was injured in a motorcycle accident, the team said Monday night. And this was earlier this month. Winslow was riding in a community college parking lot Sunday when he hit a curb at about 35 miles per hour and he was thrown from his motorcycle, Westlake police said. Now it's interesting to note that this player was wearing a helmet, but he didn't have it strapped on and the helmet flew off of his head. He landed on a landscape area on the edge of the parking lot, falling hard enough to tear out a small tree. Now the contract specifically forbids players from engaging in any type of dangerous activity, and they consider motorcycle riding a dangerous activity. The NFL contract--and I'll repeat that--forbids players from taking part in any activity which may involve a significant risk of personal injury. So I think this is important to reflect on, when we consider the issue of removing helmets, when we think of safety, when we consider personal injury to individuals. Thank you, and I'll return the remainder of my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Howard. Senator Mines.

SENATOR MINES: Thank you, Mr. President, and I've been asked to continue the debate so that the folks in the back can come up with a resolution to LB 70. And with that, I think I would offer that LB 70...I've fallen off as a supporter, simply because of what others have said. The bill has a secondary offense for not wearing a helmet and the protective eyewear provision is ambiguous. I'm a supporter of the green copy, and I've told people all along I'll support the green copy, but LB 70, as it stands now, is a caricature of the green copy. And Senator Jensen's amendment, I think, goes a long way to helping that, but it's not the green copy. I used to ride a motorcycle. I loved riding a motorcycle, no helmet, smoking a cigarette, date on the back seat, life was good. I was young. And I've grown up and understand that that was foolish, and certainly wouldn't do that anymore. But I hope that we can somehow negotiate this back together. Senator Jensen has some terrific

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training thoughts. The copy of the bill, as amended, with AM1613, could make some sense, but again, the green copy is where I'm at, and I just thought I'd share that. I know that Senator Friend wanted to speak to this, and I would give the rest of my time to Senator Friend, Mr. President.

SENATOR CUDABACK: Senator Friend. Senator Friend waives your time, Senator Mines, so did you wish to continue, or did you...

SENATOR MINES: No, thanks.

SENATOR CUDABACK: Senator Janssen. I'm sorry, Senator. Senator Janssen, would you like to speak?

SENATOR JANSSEN: If it's all right with you, Senator Cudaback.

SENATOR CUDABACK: You may, if you care to.

SENATOR JANSSEN: Thank you. Thank you, Senator Cudaback, members of the Legislature. I just wanted to share a few things with the Legislature. Two weeks ago, on a Saturday, in the town that I have my business in, there must have been about 300 "motorsickle" riders came into that town, took up about three blocks of parking. And as I went out the front door, I stopped and visited with a few of them. And I noticed them, that they all had helmets on their "motorsickles," and I should say "motorcycles." My wife keeps telling me it's not "motorsickles," it's motorcycles. So I'm correcting that for my lovely wife. And anyway, visiting with one of the gentlemen--he was putting his helmet back on--and I said, well, you know, with some legislation that's pending in the Legislature, you may not have to wear that helmet after this bill would pass. And he said, well, you know, I might not wear that helmet out here on the open road, but he said, we're from Omaha, and I'll tell you one thing; I will wear that helmet in Omaha. There are a lot of crazy people down there. So you see, I think that people with any brains at all will probably wear that helmet. I know I certainly would. When I was a young fellow--I believe I've told you all this story before--that I had a motorcycle that...it was a piece of junk; never wore a helmet. Hardly anyone knew what a helmet was at that time. Of course, that's been a good many

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years ago. We had what we called "Harley hats," and everybody put one of those little cotton Harley hats on, which would have not have helped you in any way, shape, or form if you had an accident. But I believe that the true...the true riders of motorcycles will understand the importance of a helmet. If this law, or if this bill becomes law, I certainly think that you'll see responsible people still wearing some protection of some kind. Eye protection is a good factor, also, and that is in the bill. So I just wanted to let you know that there are reasonable people who enjoy riding these machines that are very expensive. And there is taxes collected from them, also. And the people, when they, these enthusiasts, when they go on these runs, they spend a lot of money in this state. And, Senator Smith, you're exactly right; they do bypass Nebraska on their way to South Dakota, one these rallies, or wherever they're going. So we do, we do miss a lot of revenue. If you can afford one of these machines, you usually have a little bit of money, and they spend it throughout the whole state. And if anything else, this is one of the facts that's going to help our economy, to a certain extent. With that, thank you very much for allowing me to express my views on the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Mr. Clerk, items please?

CLERK: Mr. President, an amendment to be printed to LB 116 by Senator Stuthman. Senator Dwite Pedersen offers LB 677A. (Read LB 677A by title for the first time, Legislative Journal page 1667.)

SENATOR CUDABACK: We will stand at ease for just about 5 minutes, pursuant to the Speaker's orders.

EASE

SENATOR CUDABACK: The Speaker...we will resume order, and the Speaker has ordered that we will take LB 70 from the agenda and we will resume with LB 117. Mr. Clerk, please.

CLERK: Mr. President, LB 117. Senator Flood, I have Enrollment and Review amendments, first of all. (AM7091, Legislative

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Journal page 1371.)

SENATOR CUDABACK: Senator Flood, for a motion on LB 117.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 117.

SENATOR CUDABACK: You've heard the motion by Senator Flood to adopt the E & R amendments to LB 117. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Mr. President, the next amendment I have is by Senator Aguilar, AM0901. I did have a note that Senator Aguilar wanted to withdraw AM1456...I'm sorry, AM0901 and offer, as a substitute, AM1456. I have been advised that...Senator, I'm looking at AM1592. You think that's the amendment?

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Mr. President, what Senator Aguilar would like to do is substitute, withdraw and substitute, AM0901 and replace it with AM1592, but leave AM1456 where it is.

SENATOR CUDABACK: It is withdrawn and substituted with AM1592. Any objection? Without objection, so ordered. (Legislative Journal page 1556.)

SENATOR BOURNE: Thank you, Mr. President, members. AM1592 to amendment...well, actually, why don't I go back and give you a little history or a little summary to recap, remind you where we're at. This is the methamphetamine bill. The bill basically would require all individuals or, excuse me, all...you can tell it's already been a long afternoon. This would require all pseudoephedrine-based products to be behind the counter. It would, in the amended version of the bill, would require a clerk to be at least 19 years of age to sell the product. It would require that the individual purchasing the product be 18 years of age, and it would also require that person that is purchasing it to show identification. There is no logbook requirement, however, they do have to show I.D. There is no obligation on the merchant to verify the validity of that I.D. The amendment

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that we're talking about now, AM1592, is my effort at being responsive to some of the concerns that we heard on General File. It includes placing a child...this, again, is in AM1592. It includes placing a child near processing, cooking, or manufacturing of meth in the definition of child abuse. This is similar to Senator Aguilar's legislative bill, LB 148, which was heard in the Judiciary Committee and advanced to General File. It changes the age for the...which a person can sell pseudoephedrine products from 19 to age 18. That was a concern that Senator Janssen had on General File. This makes it more consistent, we feel, with the age to purchase the product. It amends the type of identification that is needed for a purchase so that it would require a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport. This language is taken from the Liquor Control Act. We had some discussion on General File about whether or not we should include a Social Security card or a Medicaid card, but we felt at the time, since those are not picture I.D. cards, that it would be more appropriate if we took the language that is already in our statute, and that's what we've done. It also clarifies language regarding a person's limit on purchasing. On page 18 of the E & R amendment, beginning on line 7, it would now read, quote: No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug or product...any drug product containing more than 1,440 milligrams of pseudoephedrine base or 1,440 milligrams of phenylpropanolamine base during a 24-hour period unless the purchase was pursuant to a medical order. Any person who violates this section shall be guilty of an infraction as defined in 29-431. This was also brought up, this issue was also brought up on General File, and I feel that the language incorporated in AM1592 regarding wholesale purchase is more clear, and I would urge your adoption of AM1592. If you had any questions or you have any questions regarding this, I'd be happy to answer them.

SENATOR CUDABACK: Heard the opening on AM1592 to LB 117. Open for discussion on that motion. Senator Chambers, followed by Senator Stuthman. Senator Chambers.

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SENATOR CHAMBERS: Mr. President, I had opposed Senator Aguilar's bill, which Senator Bourne is going to insert into LB 117. Too many times a fad will develop when society, due to publicity or if congresspersons or others are talking about a matter, will catch the public's eye and, in turn, the attention of other politicians. Since meth is the latest in a series of fads, that is becoming an item that has taken on a life of its own. The current law relative to child abuse says the following in pertinent part: A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be placed in a situation that endangers his or her life, or physical or mental health. I don't think just because methamphetamine is the monster of the day that you need to put this language into the child abuse statute--place in or near the processing, cooking, or manufacturing of methamphetamine. If that endangers the child's life or the child's physical or mental health, it's child abuse. You don't say that if a parent or a custodian or guardian of a child is changing a tire on an 18-wheel truck, it shall be child abuse to place that child in a position where, if the truck falls off the jack, it will fall and crush the child. You don't have in the statute anything that says if a child is left intentionally in a burning building. You do not itemize everything that can be a threat to the child's life or health. I think amphetamine is a problem, but I'm not going to consent to it being used to clutter the statute every place imaginable where the term "methamphetamine" or the manufacture of methamphetamine might could be placed. You could make it a crime to allow, knowingly, intentionally, or negligently, the manufacture of methamphetamine in a public school, but that's not...nobody is putting that in the law. Why not? The fact that it's not in the law does not mean that such conduct would be allowable. There are other statutes that would cover that. This portion of the amendment should be rejected, so what I'm going to request is a division of the question regarding this amendment, AM1592.

SENATOR CUDABACK: Senator Chambers and Senator Bourne, would you please come forward? Senator Aguilar, would...the Chair rules that AM1592 is divisible. Mr. Clerk, please read the division.

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CLERK: Mr. President, per your order, there will be three components of the amendment. The first amendment to be considered will be lines 1 through 23 on page 1, and lines 1 through 11 on page 2. That...those two pieces will be the first component of the amendment as offered by Senators Bourne and Aguilar. (FA281, Legislative Journal pages 1668-1669.)

SENATOR CUDABACK: Senator Bourne, I know you have opened once, but would you like to just inform the body where we stand currently?

SENATOR BOURNE: Yes, Mr. President, I'd very much like to do that. Senator Chambers has asked for a division of this amendment, AM1592, and the division that we're going to be discussing first is essentially Senator Aguilar's legislative bill, LB 148, in a modified form. So it's on page 1 of the amendment, from line 1 through line 11 of page 2, and basically what this amendment does, it...I'll just read it to you exactly. "A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:" and then it has a whole laundry list of examples of what we statutorily have determined are child abuse. And what Senator Aguilar and I are advocating in a modified form that was, again, LB 148, is to add that a person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be, and then it's (f), subdivision (f), placed in or near the processing, cooking, or manufacturing of methamphetamine. And that is what this division of the amendment does. We are having a lot of these labs or these clandestine labs, clandestine labs that are being raided and there's children present and they are literally, and Senator Aguilar can...hopefully will follow up with some additional details, they are literally having to take some of these children to detox centers after they are discovered in these houses where they're cooking meth, or these labs where they're cooking meth. So this seems to make sense to me. The bill did come out of committee 7 to none, although Senator Chambers was not present that day. There was an extensive hearing. There were actually no opponents to the bill and I think it just makes sense. With that, I would urge your adoption of this component of the amendment. Thank you.

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SENATOR CUDABACK: Thank you, Senator Bourne. (Visitors introduced.) Discussion of the first part of the divided question? Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I am totally supportive of this portion, this divided portion of it, because of minor children in the presence of the labs or the cooks or where it's being manufactured. I have a real concern with that because these are innocent children. They don't know any difference. They love their parents, but their parents don't care when they're making meth. The only thing the parents are really concerned with is to make meth to help with their addiction and supplement their income so they can buy the products so they can make more meth. That really does concern me. I do not want to see these, you know, these children being taken away. I hate to see that. But when they're in a situation like this, playing around, messing around in the area of where the meth is being made, I have a real concern about that. I do not have all the information, but I did hear on the radio the other day where they did find a couple that had a child. I think the parents were 26 and 20, or 18 or 20 or something like that, and they had a 2-year-old son, and the son was tested and was positive for meth. What does that really do for the rest of the life of that young individual? It hurts him forever. Treatment may help him in time to come but, as I've said before, it's death by meth, and this drug is so addictive and it is so controlling over the brain that they can't help themselves. So this is a real concern of mine that we do everything possible to stop these labs so that we can have these young children be successful people in life. Let's think about that, because if we don't, we're going to have a lot of people in treatment centers, on welfare, being a liability to our taxpayers. So I am truly supportive of anything that we can do to get something passed so that we can protect the youth and the children in our society. So I am...I'm in favor of this portion of it. I do not like to see this happen, but people are putting their children in that situation and it's because they got hooked on it and their mind has got them to the point where they have got to have meth. They don't care about anything else. They don't care about the children. They don't care

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about the welfare of the children. They leave on a two-day binge to get high, and higher and higher. That's what I'm concerned about. Thank you.

SENATOR ENGEL PRESIDING

SENATOR ENGEL: Thank you, Senator Stuthman. Senator Janssen, you're recognized.

SENATOR JANSSEN: Thank you, Senator Engel. Members of the Legislature, if I could ask Senator Bourne a question or two.

SENATOR ENGEL: Senator Bourne, would you respond?

SENATOR BOURNE: Certainly.

SENATOR JANSSEN: Senator Bourne, the other day I was looking at some of the cold remedies and so on, on a shelf in my store, and some of them have less pseudoephedrine in them than others do. And a lot of the liquids, I understand, for children, for small infants and so on, do...does contain a little of the ephedrine in them. Now, are some of those...would they be in this portion, in either one of these divisions, or are we going to have to put those behind glass also?

SENATOR BOURNE: Senator Janssen, the bill...now we're not discussing that particular component of the bill, but the bill would require all pseudoephedrine-based products--both starch-based, which are the tablets, and liquid, which are the products that you're referring to--behind the counter. And the reason for that is, is that you can make methamphetamine out of both liquid and starch or dry-based, talc-based pseudoephedrine products.

SENATOR JANSSEN: But it would take a larger amount then of that product to do whatever they do with them. Is that correct?

SENATOR BOURNE: I know there are some products, like for example Claritin-D, that has a higher level of pseudoephedrine base than other products. And I would assume, and I have not looked at a pediatric or an infant cold medicine, but I would

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assume they would have less pseudoephedrine base product in them. I don't know. Now I do know that it takes a certain amount of pseudoephedrine to make a particular amount of methamphetamine, so if there's less amount, less in that product, it makes sense that you would require more of it. Now we'll tell you there's a liquid-based, if you look at 1,440 milligrams, there is one liquid-based product that it would take four bottles. You could buy four bottles to get to 1,440 milligrams, so...and versus, say, 48 tablets of Sudafed, which would be about 1,440 milligrams of base.

SENATOR JANSSEN: Okay. So that would be equivalent to that one bottle. Is that correct?

SENATOR BOURNE: If you bought...there's a...there's a particular product, I think it's Triaminic, it would...you could buy four bottles of that and be at the 1,440 milligram limit, 24-hour limit that's currently in LB 117.

SENATOR JANSSEN: I see. Okay. Thank you very much. Give the rest of the time, my time, back to the Chair.

SENATOR ENGEL: Senator Aguilar, you're recognized.

SENATOR AGUILAR: Thank you, Mr. President, members. I rise in very strong support of this portion of the amendment. This was actually, this portion, was one of my bills that I felt very strongly about and I did a lot of research and a lot of background on it, and some of it came to me, via voluntarily, from other people. One of them was from the Foster Care Review Board. They come up to me with some really startling information and that is just last year in Lancaster County alone there were ten babies admitted into the foster care review program that tested positive for meth. So I hope Senator Chambers sticks around a little bit because some of this is going to be directed at him, and I'd really like him to hear it. For him to make the statement that we don't need this and this is not serious, a man of his intellect and his superior knowledge, is absolutely ludicrous. Senator Chambers could not be more wrong on this. He could not be more wrong. These people, as Senator Stuthman stated, have no feeling whatsoever.

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I'd like to read a couple quick excerpts from the newspaper. The saddest victims are the children. Meth fumes from the kitchen damage their lungs, and their meth-addicted parents often neglect them. Police raiding home-based meth labs say they have opened refrigerators to find meth oil but no milk. The children are often dirty and neglected. Another little paragraph: When it comes to antisocial behavior, one meth trait knows no bottom. One drug maker reportedly ordered his child to shoot anyone coming near the family lab. That's the level of thinking with this people. That's why I contend Senator Chambers is wrong. These people...these children are in serious, serious dangers. I talked about earlier many times the way a meth lab is discovered is because somebody was taken to the hospital as a result of an explosion and fire in a meth lab. You don't think those children being present are in immediate dangers? Sure, they are. I don't believe the existing legislation guarantees the need that we have to make sure there's clarity in the law. Too many times I've seen attorneys get people off, simply say, well, I don't see anything wrong with that child; how could they have been abused? We can't let that happen. Many times the methamphetamine doesn't show up until much later, shows up in their system. We cannot allow that to happen. The most important thing we can do is get these kids away from those parents who don't care. If they want to go through rehab, if they want to go through treatment, prove themselves as responsible adults and parents again, that's another story; that's another fight for another day. But right now the most critical thing we can do, the most important thing we can do this year to protect our children in the state of Nebraska is to pass this legislation. We absolutely have to do that. Thank you, Mr. President.

SENATOR ENGEL: Thank you, Senator Aguilar. Senator Bourne. Senator Bourne waives. Chambers, you're recognized.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I wasn't trying to harass Senator Aguilar by standing near him, but I wanted him to know and be aware of the fact that I was listening very carefully to everything he said, and it was rather ludicrous. But here's the point that I'm making. This is not an amendment designed to protect children from drugs, the

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manufacturing of drugs, because if that were it, why don't you include cocaine? Why don't you include crack? Crack is manufactured. There are crack babies. Why not marijuana, the production of marijuana? No, this is getting on the bandwagon of methamphetamine because it is the latest thing. This bill is ill-advised, in my opinion, and it's in response to an outcry by the media and others. And you see similar bills to this all over the country and they all will refer to Oklahoma or some other state and say look what they're doing, look what Iowa has done, but they still have serious methamphetamine problems, more than 90 percent, I'm saying that, but it's certainly more than 80 percent, even by what the State Patrol tells us. The State Patrol says less than 20 percent of the methamphetamine used in this state is produced within this state. All of these provisions in this bill are aimed at people who are innocent of any crime, they have no intention to commit a crime, but it's a popular political reaction to a serious problem and it shows what happens when politicians offer the solution to a problem and they are driven by law enforcement people. They're not sociologists. They're not psychologists. They're not scientists. They're not medically trained. They are politicians and they wet their finger, hold it in the wind to see which way the wind is blowing and how hard, and that's the way the politicians move. This that Senator Aguilar is offering clutters the bill. I may be the only one who will speak against it, but I'll tell you one part of his amendment that I do agree with. I think it should be child abuse to place a child in the cooking. That's what it says is child abuse, if you place the child in the processing, you place the child in the cooking, you place the child in the manufacturing. I don't want a child placed in the cooking. You got a big old vat and you're going to place a child and cook the child? I'm just reading the language: "Placed in or near," forget the "near" because you're talking about location; placed in the processing, cooking, or manufacturing. You should not place a child in the cooking. But I don't think you need to say that explicitly because you have language that covers it. Anybody who knowingly, intentionally, or negligently causes or permits a minor child to be placed in a situation that endangers his or her life or physical or mental health--which of those is not affected by the processing, cooking, or manufacturing of methamphetamine? The

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law is already there and it covers it. One of the things I've tried to do whenever we talk about drug abuse, drug use, drug selling, I hate drug dealers, but I'm not going to,...

SENATOR ENGEL: One minute.

SENATOR CHAMBERS: ...if I can stop it, I'm not going to allow the law to be corrupted and cluttered just for a political purpose to say something was put in the law about methamphetamine. It's not necessary, and that's what's going to bring down this bill, by showing that a lot of useless language, verbiage, is put into the statute so that people can feel good and say, by God, I took a swipe at methamphetamine abuse; I struck a blow against methamphetamine. It's doing nothing and most people who will be honest know that. This that the bill is addressing is not the problem of methamphetamine in Nebraska. The problem with methamphetamine in Nebraska is that 90 percent of it is coming from outside the state, methamphetamine, not the ingredients from which methamphetamine is made. Less than 20 percent...

SENATOR ENGEL: Time. Senator Howard, you're recognized.

SENATOR HOWARD: Thank you, Mr. President, members of the body. I'd like to thank Senator Aguilar and Senator Bourne for bringing in this amendment. It doesn't take a child protective service worker to let you know that having a child in the home where meth is being manufactured is a very dangerous practice. And I'd like to tell Senator Stuthman that, while I wish it were true it would only be biological parents who are manufacturing meth and have been apprehended, also this has happened with foster parents. It's a rampant problem. We need to take some action at this point. I agree with Senator Aguilar and Senator Bourne and I think that now is the time to take action on this. Thank you, and I return the remainder of my time to the Chair.

SENATOR ENGEL: Thank you, Senator. Senator Aguilar, you're next.

SENATOR AGUILAR: Thank you, Mr. President and members. I'd like to address a couple things Senator Chambers said, and one

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of the...one of the instances he talked about cocaine and marijuana, why aren't they considered as dangerous. They are very dangerous drugs, they certainly are, and over the years we've expanded some of the penalties on them to try to address that. But no way are they near as dangerous in the process of manufacturing as what methamphetamine is. That is the whole point of what we're trying to accomplish here. This isn't about anything else but protecting those children. That's all it's about. We're not looking for headlines. We're not looking for any of that. We're looking to protect the children. He talked about 80 percent...well, he used 90, but it's 80 percent of the meth comes in from out of state. That's very true. But 80 percent of law enforcement time is spent trying to track down and clean up these toxic labs around the state. They don't have any choice in that matter. They have to do that. Those are very dangerous and they have to be cleaned up immediately. That involves a lot of time, a lot of resources, a lot of money. That's the situation with those and that's what our big concern is. This is more serious than I think you're being led to believe, a lot more serious, and we must get this done. Thank you, Mr. President. If Senator Bourne wants any of my time, he can have it.

SENATOR ENGEL: Senator Bourne. Bourne waives. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Engel, members. I can certainly sympathize with where Senator Aguilar is going with...the intentions of the bill are very well-intended, but as a practical matter though, some of what Senator Chambers says, in my experience, you know, I think when you look at the characteristics of a household that's producing methamphetamine, you're not going to find a refrigerator full of food, a nicely kept home with a nice homely environment. I guess what I'm trying to say is the criteria or evidence for child neglect, almost all the time in these instances where meth is being produced, meets the criteria as already outlined in our law for child abuse and neglect. The situations that I was involved in when we'd do home visits and so forth, the homes were as you described, grossly unkept, no food available, the kids were in grossly unkept condition, and all of that fits the criteria in

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our existing language for...to bring evidence of charges of child neglect and child abuse. I think it would be a very rare occurrence or a very rare incidence where you would have the manufacturing of methamphetamine and the home being in a very idealistic type of situation. That would be a very rare characteristic. And under our current statute, it indicates that a person commits child abuse if the child is placed in a situation that endangers his or her life or physical or mental health. I, being a layman, not an attorney, but having worked with law enforcement collaboratively and cooperatively, and having been to meth labs and visiting, being involved with individuals that are addicted to methamphetamine, it's been my experience that in an overwhelming majority of time other elements of the household and the conditions of the kids would meet the criteria to bring charges of child neglect. And the fact that the cooking of meth and given the intrinsic danger involved with that, I think the cooking of the meth in and of itself within the household would meet the criteria as laid out within our current statute of child abuse and child neglect. So I'm very sympathetic with what you're trying to do, but I question the necessity of it, quite frankly. I think, in my instances of involvement with methamphetamine production, there has been no barriers in our current law to bring appropriate charges of child abuse and neglect, so I just question the absolute necessity for this. I think that, given the characteristics of these household as...households, as, Senator Aguilar, as you outlined, there is more than enough evidence to bring charges of child neglect. And I think that the fact that methamphetamine and the intrinsic dangers associated with cooking meth, that in and of itself and exposing children to that brings more than sufficient evidence to bring these types of charges, appropriately so, I might add, to these individuals. Thank you.

SENATOR ENGEL: Senator Synowiecki. Senator Flood.

SENATOR FLOOD: Mr. President, members, I rise in support of what Senator Aguilar and Senator Bourne are attempting to do in FA281. I do see where we could make some changes to the language, as written. Currently, Senator Chambers raised the issue of being placed in the cooking. I can see his point on

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that insofar that it may be somewhat confusing as to what we're trying to accomplish here. But the underlying mission is to make it felony child abuse if you allow your children to be around a processing, cooking, or manufacturing effort of methamphetamine, and that makes sense to me. You don't want kids hanging out where Mom is, or Dad is, is cooking anhydrous ammonia and making meth. That's the point. Go to your schools across the state and ask if they have any kids who they think are a part of a family that makes or sells or is involved in the methamphetamine trade in Nebraska and they'll tell you a lot of these kids come to school on Monday and they haven't eaten for three days and they haven't seen Mom because she's been out selling or using. That has to stop and that is felony child abuse, and I support Senator Aguilar's effort to put it in the statute. Maybe we can clear it up with a technical amendment as to what we're trying to talk about or accomplish here, but I think Senator Aguilar has appropriately identified the need to specifically say if you're letting your kids live in this environment around methamphetamines, more than any other drug, we've seen that this drug has destroyed families because it takes this whole issue of what's right and wrong out of Mom's head or Dad's head and the kids usually fend for themselves, and that is felony child abuse. And I guess there's some interpretation that would have to occur, I guess we'd want it in the legislative intent, as to what "near" means. If Dad is doing this and nobody in the family knows and he's out in the Quonset and the kids are never over there, maybe that isn't felony child abuse, in my mind. But if it's in the garage and the kids are running around and the State Patrol shows us pictures of teddy bears and children's toys right next to the meth cooking materials and the meth lab, that's felony child abuse, if you can tie a child to the area where the child has been in and around the meth process, and it should be felony child abuse. And Senator Aguilar is right to do something about it, and it's a pretty extreme penalty and it should be. Senator Synowiecki raised an interesting point and that is our current child neglect and child abuse statutes might do the job, depending on the facts that you have in the given case. I think what we're looking for here is an immediate way to not only address the criminal activity and the danger on children, but we're looking for a way to get these kids out of the environment

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as soon as possible so that they can go to a home where they're not around meth and they're not cooking stuff up so that people can shoot it in their veins. That, that makes sense to me. And I will differ with Senator Synowiecki. I think Senator Aguilar is right by putting something specifically in the statute that addresses the manufacturing of methamphetamine. Maybe there's a better way to describe what we're trying to get to. When law enforcement goes and busts up one of these meth labs, that gives them another charge they can list on the complaint or on the citation or at bond hearing so that the judge is immediately aware that this wasn't just a manufacturer; this individual let his kids run around. And I think that we should require the law enforcement official or the county attorney to, you know, to specifically prove up what interaction children had with a meth making operation.

SENATOR ENGEL: One minute.

SENATOR FLOOD: That should be in the complaint against the defendant so that prosecutors make that case specifically. So I do support what Senator Aguilar and Senator Bourne have worked together to accomplish. I do think that a technical amendment may be necessary to maybe clarify what our intent is, but I think we're on the right path. Thank you, Mr. President.

SENATOR ENGEL: Senator Flood. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Flood made some interesting observations, and I have to ask him a question or two.

SENATOR ENGEL: Senator Flood.

SENATOR CHAMBERS: Senator Flood, you had mentioned that maybe a technical language could...a technical amendment could clean up what I had pointed out. Could you tell me generally or briefly what that amendment might consist of?

SENATOR FLOOD: I would strike the word "in."

SENATOR CHAMBERS: Why? If a child is placed in cooking, should

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not that be child abuse? Should that be child abuse?

SENATOR FLOOD: If we're going to focus on the relevant issue here, and that is making meth, "placed in cooking" is not...is a diversion from the real issue, which is meth. I don't think we have a...

SENATOR CHAMBERS: But on its own, you think cooking...see, now you've got it before you in statutory form. You want to remove cooking a child from the realm of child abuse. Is that true?

SENATOR FLOOD: I think that it would...cooking a child would be prima facie evidence that you're a child abuser, and I'm not necessarily concerned it's a statewide dilemma at this point.

SENATOR CHAMBERS: Now...

SENATOR FLOOD: However...

SENATOR CHAMBERS: Okay, I'll accept that.

SENATOR FLOOD: Okay.

SENATOR CHAMBERS: Good answer. You said prima facie. When you look, as...let's go by what Senator Synowiecki pointed out, when you look at the circumstances under which meth is being cooked or manufactured, is that not prima facie evidence, if a child is there, that child abuse is occurring? The very circumstances under which this occurs, if a child is under...in those circumstances, isn't that more in fact than prima facie evidence, but it's at least that, that child abuse is occurring? Isn't that true?

SENATOR FLOOD: I think, given the fact we have 93 different counties and 93 different county attorneys, that may not always make it into the complaint, and the idea here, by adding specific language regarding the manufacturing of methamphetamine, addresses the very point that Senator Aguilar is trying to accomplish, and that is get these kids out of these homes and make it a crime to cook meth around children.

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SENATOR CHAMBERS: Thank you, Senator Flood. I should call him alias Fred Astaire, alias Gene Kelly, alias Sammy Davis Jr., because he tap-danced around that, and he knows good and well the validity of what Senator Synowiecki is unassailable, the validity of what I have said is unassailable. And he is a lawyer and he knows that what we're saying is true, but since he's put himself in a position to support what Senator Aguilar is offering, he's got to pretend not to know the reality that exists in this state. We don't need this language. Crack is dangerous. Pregnant women who have used crack have given birth to children who have crack in their system. They're called crack babies. Other drugs can be transmitted from the mother to the child, but you're not touching them. You know why? Because methamphetamine is the headline grabber. That's why methamphetamine is put here. For how many years has meth been known about? Why now? Because now is when everybody wants to get on the bandwagon. This is not striking a blow against methamphetamine. It is not providing a protection of children. That protection is already in the law. Ever since I've been here,...

SENATOR ENGEL: One minute.

SENATOR CHAMBERS: ...with all kinds of statutes I have opposed putting surplusage in the statute books. Just to make somebody feel good, they want to say in different words what is already there, just so that they can say they amended a bill, amended the law. That's all that this is that Senator Aguilar is offering. Had his bill come out here on his own, I would have fought it to the death. I would have tried to do everything I could to kill it. It was not prioritized, as far as I know, and it's going to hitch a ride on this bill, which I've been made to think is so important. Well, I think they're going to have to do some weighing and evaluating here. Which is more important? Are you going to let this provision bring down the bill? It doesn't matter to me. I'll bring down this provision in whatever form it comes before us. Thank you, Mr. President.

SENATOR ENGEL: Thank you, Senator Chambers. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President, members of the

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body. First of all, I would like to just talk a little bit about in my earlier discussion about the concern of parents and what Senator Howard had mentioned in hers about, you know, there are foster parents doing it, too. That situation even makes it worse when you have foster parents. Why are...why are parents foster parents? Because they want to care and do the best for some children that have had bad situations. But when the foster agency allows parents to do this, I think there is where we need to run a lot bigger hammer on that situation. But I want to also mention another part in an article that I have read, and it was from Minnesota. It says meth plays a role in up to 81 percent of child protection cases reported in Minnesota. Now, I know that's Minnesota, but I'm sure it'd be similar here, 80 percent of the child protection cases. You know, in a few days we're going to get the budget back and I think there's a line-item in there that is asking for some more money for child protection workers to help with these kids, and I'll bet you that line is going to get a little red through it. It won't be accepted. So, you know, what are we really trying to do here? I'll admit we've got to go on the prevention. We've got to prevent this. But while we've got the situation here, while we've got the labs going, while we've got manufacturers that could care less about anything else except making meth so they can feel a little better than they felt the day before, that's what they're interested in. They don't care about their little kids. Somebody needs to take care of those kids. That's why Senator Aguilar has put forth this amendment, and I support that. Do we care about these kids? Yes, we do. Should we have to? No. But with the situation that we...that is allowed, that is happening in the state, people making meth, utilizing meth that totally affects their brain, and I've said it time and time again, death by meth, and it happens regular, that's a concern that I have. Yes, we should be going a lot further in the prevention part of it. So with that, those comments, if I have any time left, I'll give it to Senator Bourne.

SENATOR ENGEL: Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Thank you, Senator Stuthman. I wanted to provide some clarification, and hopefully Senator Flood is there to listen. Sometimes, I made

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this comment the other day, when Senator Landis talks about gas, people tend to listen to him. When Senator Chambers talks about statutory language, people tend to listen to him. But in this case, I think Senator Chambers is wrong. Because if you read carefully what it says, it says placed in or near the processing, the cooking, or the manufacturing of methamphetamine. It's not...to say that you will be charged with child abuse if a child is in a meth cooking pot is absurd. Read it carefully: placed in or near the processing; placed in or near the cooking; placed in or near the manufacturing of methamphetamine. It's as clear as clear can be. I don't see a problem. Listen, what we're trying to do here is say that the placement of children in an environment where methamphetamine is being processed, cooked, or manufacturing should receive a heightened scrutiny, so to speak, and that it will be considered child abuse. Could you argue that...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...child abuse occurs if...under the current section of the statute, specifically it says where it's a...specifically the place where it says "placed in a situation that endangers his or her life or physical or mental health"? Sure, you "betcha." You could also say that it's child abuse when one is deprived of necessary food, clothing, shelter, or care. Senator Synowiecki mentioned that most of these houses where meth is being cooked don't have food, clothing, shelter, or appropriate care, and I would agree with that. What we are saying is that methamphetamine is such an insidious harm to our state that we are placing a heightened level, punishable under the child abuse statutes for parents, guardians, foster parents, whatever it is, any adult that places a child in that environment. I think it's appropriate.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: It's now your time, Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President. Members, again, if you read it carefully, I don't believe there's a language problem, and I would say to you that I'm as fussy as Senator

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Chambers when it comes to statutory language, but I urge each and every one of you to read this carefully: placed in or near the processing, placed in or near the cooking, placed in or near the manufacturing the methamphetamine. I don't believe we need any amendment whatsoever to make this clear. And again, I think it's entirely appropriate, given how significant a plague methamphetamine is in our state, I think it's very appropriate to add this language to our child abuse statutes. With that, I would urge your adoption of FA281.

SENATOR CUDABACK: Thank you, Senator Bourne. Further discussion? Senator Aguilar. This will be your third time, Senator.

SENATOR AGUILAR: Thank you, Mr. President. Appreciate it. Members, Senator Bourne pointed out the point that I wanted to make, and did so very well, and maybe that says something. You know, if somebody as astute as Senator Chambers can miss something, then maybe we need more clarity in the law, and that's what I'm asking to do. I'm asking for more clarity so we make sure that anybody manufacturing methamphetamine with children present are probably going to lose those kids for awhile. Senator Synowiecki had some good points, but he started off with the statement that he's not an attorney. I agree, he's not an attorney, and I would ask him and anybody else in here, are you willing to have your kids, say for instance, go to a baby-sitter and have them get caught manufacturing meth? Are you comfortable with the existing law? Are you comfortable with that, or would you rather see them have the clarity that I'm offering in the language before you today to make sure that those people get their due coming? Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Aguilar. Senator Chambers. And this is also your third time.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'll consent to being challenged on anything except grammatical construction. Let me read...explain something first. When you use the word "or" in a series, that's like a correlative. You're making each one of these things the equivalent of, or it has the same standing, as any other thing in the series. It

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doesn't mean like a disjunction or disjunctive where you are setting things in opposition to each other. So here's the way it would read: placed in or near. That's the phraseology. So if you say placed near the processing, near the cooking, near the manufacturing, that makes sense. It also makes sense the other way, but it's not what they intend: placed in the processing, placed in the cooking, placed in the manufacturing. That's the way it reads. Now if that's what they want, put it there. I said I agree with that. If you're going to cook a child, that ought to be child abuse. But that is, even that, is covered already by the existing language. We have had discussions of child abuse down through the years. During those years, methamphetamine was known about. Everybody wants to try to show that they have contributed to the fight against methamphetamine. A craze swept through the U.S. Congress a few years ago when they wanted to reinstate a federal death penalty and every member of the House wanted to put something into the bill. So you had to have not just a homicide, but something that made it different from all of the homicides. So you know what some of them would say? If you killed a chicken inspector in the process of inspecting chickens while in the employ of the Department of Agriculture, if you kill an oil worker on a derrick located in the Gulf of Mexico, they had to do this so they could all find a way to create a new death penalty offense. That's what's happening here. The law already covers this. And the way this language is structured, it does mean in the process and placing a child in the cooking. That ought to be child abuse, I'm not disputing that, but I'm saying that is not what they had in mind when they put that language. The "in or near" construction is very similar to the routine use of "knowingly and intentionally," but that does not always fit. Leave it here, but in the same way that I would have fought against this bill had it come out here on its own, I'm going to fight against the bill if it's added. And we only go to 5:30 on this bill. There are other people with amendments. I don't have to linger on this by myself. But I want you to know that I will assist in carrying this bill beyond 5:30. Will it get on the agenda again? I have no way of knowing. But I'm not going to linger on this. I'll let other people have their opportunities to add their amendments because some of them are of value and they raise crucial issues. But after they get through, Atropos will

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come to center stage, and right now, Senator Aguilar, you're not dealing with Atropos. I could mention the other two. Lachesis is one of them.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I told you two out of three. You have to look up the third one. You might be able to work with those other two, but when Atropos comes, curtains, doom, no mercy. And you can't defeat him. He always win, and it may not even be a "he." Check it out and see who this person is I'm talking about. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Mr. Clerk, items for the record, please?

CLERK: Mr. President, LB 538, which had been referred to Judiciary, is reported to General File with amendments, as is LB 703, General File with amendments; those signed by Senator Bourne, as Chair. Two new A bills. (Read LB 13A and LB 538A by title for the first time.) And Senator Smith has an amendment to LB 70 to be printed. (Legislative Journal pages 1669-1670.)

Mr. President, Senator Flood would move to amend Senator Bourne's amendment. (FA284, Legislative Journal page 1671.)

SENATOR CUDABACK: Senator Flood, you're recognized to open on your amendment to the Bourne amendment to LB 117.

SENATOR FLOOD: Thank you, Mr. President and members. I've worked on this with Senator Bourne and Senator Aguilar. It's a simple amendment. It removes two words from FA281. My amendment would strike the words "in or," so in the end the amendment offered by Senator Bourne and Aguilar would read, "Placed near the processing, cooking, or manufacturing of methamphetamine." That's a small technical change, but I believe it accomplishes what Senator Aguilar and Bourne are attempting to do, and that is to make sure parents or adults who place children near this deadly stuff pay the price and hopefully those children are removed from that home until they can be placed in a home and put...placed in a home where they're

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not around meth, and returned to their parents following treatment, if the parents want to go that route and make the decision to be parents again. But I think this is a reasonable amendment and I guess I don't have anything more, other than to answer anybody's questions on it. Again, it just strikes the words "in or." Thank you.

SENATOR CUDABACK: Thank you, Senator Flood. You've heard the opening on FA284 to the Bourne amendment, FA281. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, I would support the amendment. And I would like to ask Senator Synowiecki a question or two, if he will respond.

SENATOR CUDABACK: Senator Synowiecki, would you?

SENATOR SYNOWIECKI: Yes, of course.

SENATOR CHAMBERS: Senator Synowiecki, during your work, if you went to one of these homes that has been discussed and crack cocaine was found to be in a location where children could gain access to it, could that fact be used as a basis to further show that the child had been endangered?

SENATOR SYNOWIECKI: You know, Senator Chambers, I would just have to work off of a hypothetical because that never really happened.

SENATOR CHAMBERS: Right.

SENATOR SYNOWIECKI: But I could see where perhaps, although I think there's a heightened level of intrinsic danger with methamphetamine cooking than just simply having the drug your speaking of available in the residence. So I guess what I'm saying is I don't know.

SENATOR CHAMBERS: Okay. Thank you. But I have seen articles where children were removed from the home because meth...not meth, but cocaine, heroin, crack were accessible by these children. The current language in the statute is adequate to

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cover what Senator Aguilar is bringing to us. You all don't care about the way the statutes read; I do. So we just have to battle these things out and see who the winner is. Now, Senator Bourne knows that I don't like the direction the bill is going, but on General File I didn't offer a lot of amendments. He didn't even have to come close to talking about invoking cloture. I had never said I was going to do everything I could to stop the bill, but as it gets cluttered up my whole attitude changes. What Senator Aguilar is offering as an amendment to this bill is a proposition that I would have forced him to take to cloture in order to clutter the child abuse statutes. What exists now in that statute are broad categories to give direction and guidance, to give the types of broad conduct which would constitute endangering the child, but there is no attempt to list every conceivable inappropriate set of circumstances that can endanger the child. When the terms "cruelly confined or cruelly punished" appear as subsection (b) of Section 28-707, there are no small Roman numerals listed under there to say in a closed cabinet, in a cold basement, in a facility lacking hot and cold running water. Those things are not mentioned because you're giving broad categories. You don't have to mention cocaine...I meant methamphetamine processing or cooking any more than you have to say leaving kettles of boiling water or boiling oil on a stove which a child can reach and pull down on himself or herself. You don't have to do that. The language has a catchall which covers all such things as that. If this statute had been constructed with the purpose of listing...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...those things that constitute child abuse, whatever is not listed could not be deemed child abuse. But it is not that kind of listing, it is not that kind of statute. So we don't need to clutter it with the fad of the day. Methamphetamine is the fad of the day. Add it to the bill if you want to and, after everybody else gets through with their amendments, I'm going to come back and I'm going to try to strike it. And I may simply be not voting so that, if you add it, I can move to reconsider it and get my time out of this bill. Even though there's a part of it that I have questions about, and it's one of the divisions that we may get to, I have

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not said that those differences would cause me to scuttle the bill. This one may, though. We'll just have to see. May I continue, Mr. President?

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: May I continue? That was my question.

SENATOR CUDABACK: I'm sorry, but no.

SENATOR CHAMBERS: Oh, thank you.

SENATOR CUDABACK: There are no further lights on. Senator Flood, the Chair will recognize you to close on FA284. Senator Flood waives closing. The question before the body is adoption of the Flood amendment to the Bourne amendment to LB 117. All in favor vote aye; those opposed, nay. We're voting on adoption of the Flood amendment to FA281. This is the Flood amendment to the Bourne amendment. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Flood's amendment.

SENATOR CUDABACK: The Flood amendment has been adopted. Back to discussion of FA281. Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. Senator Aguilar, would you yield?

SENATOR CUDABACK: Senator Aguilar.

SENATOR AGUILAR: Yes, I will.

SENATOR SYNOWIECKI: Is...the concept behind this bill, is this...this amendment, was this a bill of yours?

SENATOR AGUILAR: Yes, it was, LB 148.

SENATOR SYNOWIECKI: Was there any consideration, Senator Aguilar...again, it's been, number one, my experience and

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it's...in reading this, I think any layman would indicate or would agree that if you're processing, cooking, or manufacturing methamphetamine, and with the intrinsic dangers associated with that, that that may indeed fit the parameters of placing a child in a situation that endangers his or her life. Was there any consideration, though, Senator Aguilar, to expanding our child abuse and neglect statutes to the sale of any illegal drug? In other words, if you have a household and you're selling meth, or if you're selling marijuana out of a household, or if you're selling cocaine, now that I don't think you can successfully argue meets the criteria of placing a child in certain levels of danger to life and so forth. I mean, has there been any discussion relative to the possibility of amending these child abuse and neglect statutes to cover the situation where drugs, illegal drugs, are being sold? Because, Senator Aguilar, I think if you're manufacturing, and processing, and cooking meth, that's already covered here. But I would be interested in expanding our child abuse and neglect statutes to look at the kids in our community that are exposed to the sale of illegal drugs and of these individuals, I'll call them, that profit from selling drugs and exposing their kids to that environment. I think something needs to be done in that area and I don't think them situations are covered on our existing statutes.

SENATOR AGUILAR: I couldn't agree more, but that's another fight for another day. The immediate danger right here and that we're trying to address is the intrinsic dangers that happens when meth is being cooked, the volatility of the chemicals involved, the opportunity for a fire, for an explosion. To me, that is an immediate thing that needs to be addressed right now, and as you can see right now what the process we're going through trying to get to the square one is like mission impossible. To add what you're suggesting, you know, I don't think we're going to accomplish that as a body.

SENATOR SYNOWIECKI: Well, I think, Senator Aguilar, again, I'm sympathetic to what you want to do. I'm sympathetic to your underlying...what you're trying to do here and I know what you're trying to do, but I don't...I don't know if there's a demonstrated need for it. Again, every time I was involved in situations like this, they would bring child abuse and neglect

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charges, and I think there's a greater demonstrated need in the area of the sale and distribution of illegal drugs and exposing youngsters to that and including that within our...I mean, from that angle, I think one can lay out a demonstrated need in terms of our current statutes, and I'm not convinced that there is a demonstrated need to do what you're doing in terms of the language under FA281. Because of the dangers associated with the cooking of methamphetamine, I think clearly fit the parameters of causing or, excuse me, of intentionally causing a minor to be exposed to dangerous situations. And, you know, again, I'm sympathetic to what you're trying to do. I'm not sitting here trying to endorse, in any way, shape or form, the manufacturing or processing of methamphetamine, but I think that we're already covered here in our statutes. And if you're aware...

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: ...if you are aware of situations where there's households where methamphetamine is being produced and being cooked and, for whatever reason, the county attorney does not interpret the current statutes as being expansive enough to include that as a danger to a child, I'd be interested to know what justification that particular county attorney might be using. I would yield the rest of my time to you, Senator Aguilar. Thank you.

SENATOR CUDABACK: Senator Aguilar, about 31 seconds.

SENATOR AGUILAR: Okay, what I would...what I would first say is that earlier in your dissertation you said almost every time a county attorney will do that. Therein lies the problem, that "almost every time." Earlier you heard Senator Flood get up and speak about 93 counties, 93 different county attorneys; almost every one of them would automatically file those charges. I want to get the rest of them. I want...I want all of them to be of the same mind, to have clarity in the law to know that that's what they're going to...needs to be done and that's what they will do. Thank you.

SENATOR CUDABACK: Thank you, Senator Aguilar and Senator

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Synowiecki. Senator Burling, on the Bourne amendment.

SENATOR BURLING: Would call the question.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on the Bourne amendment, FA281? All in favor vote aye; those opposed, nay. Voting on ceasing debate on the Bourne amendment. Voting on ceasing debate. Have you all voted on the question who care to? Have you all voted who care to? Senator Burling, for what purpose do you rise?

SENATOR BURLING: A call of the house, please, and call-in votes.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye; those opposed vote nay. Record please, Mr. Clerk.

CLERK: 18 ayes, 0 nays to place the house under call, Mr. President.

SENATOR CUDABACK: The house is under call. All unexcused members please report to the Chamber. Unauthorized personnel please leave the floor. The house is under call. The house is under call. All unexcused senators please report to the Chamber. Senator Janssen, Senator Cunningham, Senator Combs. Senator Landis. Senator Stuhr, Senator Brown, Senator Schrock, Senator Raikes, Senator Redfield. Members, the house is under call. Please report to the Chamber and check in. Senator Raikes, Senator Schrock, Senator Brown, Senator Stuhr, and Senator Landis. We hadn't started accepting them yet, Senator Landis. We will as soon as they check in. The Clerk now will take call-in votes, as authorized by Senator Burling, on calling the question.

CLERK: Excuse me. Senator Landis voting yes. Senator Brown voting yes. Senator Dwite Pedersen voting yes. Senator Janssen voting yes. Senator Jensen voting yes.

SENATOR CUDABACK: Record please, Mr. Clerk.

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CLERK: 25 ayes, 1 nay, Mr. President, to cease debate.

SENATOR CUDABACK: The motion was successful. Debate does cease. Senator Bourne, you're recognized to close.

SENATOR BOURNE: Mr. President, members, thank you. I'm listening to the debate. I'm looking at what is on our agenda. We have ten amendments yet to go on LB 117, and we're on the eighty-first day of the legislative session. I believe that LB 117 is that important that we need to get it done this session. Senator Brashear often says don't let perfection be the enemy of good, and if what it takes to move the bill along, as committed to by Senator Chambers, is the nonadoption of this component of the floor amendment, Senator Aguilar and I both think that, even though this component has merit, again, to move the bill along, what I'm going to urge the body to do is either to vote red on this particular component or not vote, and then we'll move on to the other two components of this divided amendment. So again, in order to move the bill along...we have a number of amendments after this. I do believe it's important we resolve this, this year. In the purpose or because of the time constraints we're involved in, rather than go through the reconsideration after reconsideration, I'm going to urge you to vote either no or not vote on this floor amendment, and then we'll take up the other two divisions. With that, either vote red or don't vote on this component's adoption. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing. All in favor of adoption of FA281 vote aye; those opposed vote nay. Have you all voted on the question who care to? Have you all voted? Record please, Mr. Clerk.

CLERK: 2 ayes, 13 nays, Mr. President, on FA281.

SENATOR CUDABACK: The amendment is not adopted. I do raise the call.

CLERK: Mr. President, the second component of the amendment consists of...well, it's...it will be known as FA282, and it consists of lines 12 through 17 of the original AM1592.

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(Legislative Journal page 1671.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Bourne, would you like to remind the body what FA282 contains, please?

SENATOR BOURNE: Yes. Yes, Mr. President, thank you. This will be my opening on this component. As you heard at the beginning, there were several issues that we had discussed on General File and put into an amendment that Senator Aguilar allowed me to substitute for his amendment. And what this component contains is that, instead of a clerk having to be 19 years of age to sell pseudoephedrine-based product, they have to be 18. That is consistent with other areas of our statute. It also...it also strikes the language that raised some questions on General File that simply said an operator's license or state identification card, and would insert a valid driver's license or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport. So this component does two things. It reduces the age of the clerk selling the product from 19 to 18, and makes more clear what driver's license or, excuse me, what identification has to be presented upon the purchase of a pseudoephedrine-based product. With that, I don't believe there's any opposition to this component. I would ask for your adoption of FA282. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. Open for discussion on the second component. Senator Aguilar. Senator Aguilar waives his opportunity. Senator Janssen, followed by Senator Chambers.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Senator Bourne, thank you for filing this amendment. These were a couple of the concerns that I had on General File. It made no sense at all that if you could be 18 years of age to buy the product but you had to be 19 to sell it. Well, you know, that's not...that's not consistent with statutes in other areas of controlled substance. I guess that's what you're going to have to call this now. That would be fine. I don't...I don't really realize what...how we can do it otherwise on the identification than this. You know, I had suggested that

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it would either be a Medicare card or a Medicaid card used as identification, but that does not have a picture on it. So with the other items that are on there now, I can live with that, and I thank you, Senator Bourne, for putting this in this amendment. With that, I give the rest of my time to Senator Bourne, if he'd like to have it.

SENATOR CUDABACK: Senator Bourne, did you wish to utilize some of Senator Janssen's time?

SENATOR BOURNE: Thank you, Mr. President, members. Thank you, Senator Janssen. I appreciate your comments. It makes sense that what we're doing here, it's consistent, and I would urge your adoption of this component.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I would like to ask Senator Bourne a question.

SENATOR CUDABACK: Senator Bourne, would you respond?

SENATOR BOURNE: Certainly.

SENATOR CHAMBERS: Senator Bourne, as drafted, this portion is an improvement over what was in the bill or the form of it that we were dealing with before you offered this amendment. I want you to tell me why a Medicaid or Medicare card is not included among these types of identification, if you will.

SENATOR BOURNE: Absolutely, Senator Chambers. Because neither of those cards has a photograph on that card.

SENATOR CHAMBERS: So...and I ask you this...and this I won't ask you because the question that I want to get around to asking is would you consider putting Medicaid or Medicare card?

SENATOR BOURNE: Are you asking that question now?

SENATOR CHAMBERS: Yes, that is a question I will ask you.

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SENATOR BOURNE: Well, I'm...I did consider that. I thought about that a lot between General and Select File, and I came to the assessment that because there is no photo on there that it just didn't make sense. And if I can, Senator Chambers, what they use a Medicaid or a Medicare card for is simply to access healthcare services. They don't accept Medicaid or Medicare cards for any identification purposes other than to access healthcare.

SENATOR CHAMBERS: Right, but we're creating a set of circumstances where we can allow anything to be used for identification that we choose. We could even say a birth certificate. Well, how many...

SENATOR BOURNE: We could but, again, I don't think there's a photo on that.

SENATOR CHAMBERS: Right. So if they have this old person coming in with a Medicare or Medicaid card, with a cane or a walker to get some cough medicine, the clerk would conclude that this old person probably mugged some other one to get that card to come buy some cough medicine to take it home and make some methamphetamine?

SENATOR BOURNE: Well, Senator Chambers, I do have to remind you that a 20-year-old can have a Medicaid card.

SENATOR CHAMBERS: Well, we will put an age then, an elderly person. Here's what I'm getting at, and I won't keep questioning you because I don't want to take time. I wish my colleagues would think about this. Elderly people don't have, not all of them, don't have driver's licenses, they do not have state-issued identification cards, they do not get out a lot, and some do shuffle their way to a grocery store. Some may be driven to a grocery store by what they call jitney drivers, who do not get out of their car and go into a store to make purchases. They'll drive the person there, but they don't go in and make purchases. So the way the bill is drafted, the elderly person who is ambulatory could not purchase cough medicine or any of these others, whether it's for an allergy or anything

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else. And it's nice to say that they would have some social welfare agency they could call and say, send somebody out here to go to the store and get me the cough medicine. If it's hard to get assistance for people who are bedridden, then you're not going to be able to get people to go to the store for them to purchase these products. I think a glaring gap exists in this bill by ignoring the elderly people who will not have one of these types of identification. I said that I would not offer amendments, and I mean that, but it'll just give me another reason to attack this when you all have enacted it into the law. I can show from the record I raised the issue; I discussed it as much as I thought I needed to, to make clear what I was saying, but the body rejected that; and they're...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...so eager to have slapped at the meth problem that they used for identification which is acceptable those pieces which are in the liquor control statutes. There are a lot of older people who don't drink liquor, so they're not even going to be involved in that, so I think this gap exists. I won't offer the amendment because you probably wouldn't adopt it. Those who are managing the bill don't want it. If somebody else thinks it ought to be there, make the run at it. But I said I wouldn't offer the amendments, I'm not going to. It's a bad bill. It could be made better, but it's not going to be made as much better as it could be. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Bourne, there are no further lights on. Did you wish to close on the second component, divided committee...or divided amendment?

SENATOR BOURNE: Thank you, Mr. President, members. I would urge your adoption of this. It, again, it lowers the age of those individuals selling a pseudoephedrine-based product from 19 to 18, and it broadens the definition and makes more clear what type of identification has to be presented, and that would be a driver's license that's valid, a operator's license, an I.D. card issued by the state, a military I.D. card, an alien registration card, or a passport. Now what's unique about all three or all of those forms of identification is they have a

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photo on them. Senator Chambers asked about the Medicare and Medicaid card. I'm struggling as to...and this...and we are going to be on this bill for some time so we can discuss that, but I am struggling with the fact that we would be adding a form of I.D. that does not have photo identification on it and I...or a picture on there, and I don't know that that's the right direction to go. With that, I would urge your adoption of FA282 at this time. Thank you.

SENATOR CUDABACK: You've heard the closing on FA282. The question before the body, whether that amendment should be adopted. All in favor vote aye; those opposed, nay. Voting on adoption of the second component of the divided amendment, FA282. Have you all voted on the question who wish to? Record please, Mr. Clerk.

CLERK: 33 ayes, 1 nay, Mr. President, on the adoption of the amendment.

SENATOR CUDABACK: The amendment has been adopted. Mr. Clerk, next component.

CLERK: FA283, Mr. President, consisting of lines 18 through 22 of the original amendment. (Legislative Journal page 1671.)

SENATOR CUDABACK: Thank you. Senator Bourne, did you wish to open or inform the body what FA283 contains?

SENATOR BOURNE: Thank you, Mr. President, members. This portion of the committee amendment just adds clarity as to what wholesale acquisition is. And if you recall, in the committee amendment we said acquire by retail, and now we're going to add, after "acquire," "other than wholesale acquisition by a retail business in the normal course of its trade or business." So it makes more clear what acquiring other than by wholesale acquisition meant or means. With that, I would urge your adoption of this component.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on FA283. Open for discussion. Any wishing to discuss FA283? Senator Bourne, there are no lights on. You're

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recognized to close, if you care to. He waives closing. Question before the body is adoption of FA283 to LB 117. All in favor vote aye; those opposed, nay. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 29 ayes, 0 nays on the adoption of FA283.

SENATOR CUDABACK: FA283 has been adopted. Mr. Clerk.

CLERK: Mr. President, the next amendment to the bill, Senator Beutler, AM1316.

SENATOR CUDABACK: Senator Beutler, to open on AM1316.

SENATOR BEUTLER: Senator Cudaback, Mr. Clerk, I'd ask unanimous consent to substitute AM1655. (Legislative Journal page 1672.)

SENATOR CUDABACK: Any objection? If not, so ordered.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, we had a long and interesting and I think very fruitful debate on General File on the subject of whether a log and, if a log, what kind of a log would make sense in this particular...in this particular bill. Different senators had different opinions about the effectiveness of this bill in its present form. I happen to be one of those that has the opinion it's really not going to do very much in its present form. Senator Bourne disagrees. Senator Chambers is somewhere in that scale. But I do think that if you're going to do this, the current penalty of a \$50 fine on the side of someone who sells contrary to the bill, and an infraction on the side of...being the penalty on the side of somebody who buys contrary to the provisions of this bill, and then having no record whatsoever except trying to reconstruct on the basis of oral testimony some sort of violation of the act, I mean, bottom line is you're not going to prosecute anybody under this bill unless you develop a real log that can be used as evidence in an efficient sort of way. So then we talked about, you may recall, the handwritten log, the tediousness of that, the burden on the business, and my thoughts came to this. If you're going to have a log, we need to do what...what would really be efficient is an electronic log. At

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the same time that that's clearly the end goal and there's not much use, in my opinion, at stopping with a manual log, at the same time, we don't know what the price of that kind of an electronic log would be. So what I came to was an amendment that said this: By January 1, 2006, that is for the rest of this year, the State Patrol shall develop a complete plan and present it to the Judiciary Committee for an electronic log, and that plan would include electronic transmission of information by sellers, and a central repository capable of providing on-line access to the information collected in the form required by the Patrol and secured against unauthorized access, and then a fully researched estimate of the costs of implementing and maintaining the electronic log and central repository. So have the State Patrol do all this for the rest of this year and then the plan would be brought back for review and advice by the Judiciary Committee, and implemented by January 1 of 2007 if funding for the plan is provided by the Legislature. So the concept involves coming back to the Legislature with something substantive; let the Judiciary Committee advise again with regard to the substantive provisions of the plan; have a discussion the next year's appropriations bill, in the next year's appropriations debate as to whether you want to fund it. If you don't want to fund it, it would stop at that point in time. But if, as many of us are thinking now, that this is the way to make this truly effective without significant additional burdens on either the consumers or business, that this is probably the way to go, and this amendment would see to it that that path was thoroughly explored and brought back to your attention. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on AM1655 by Senator Beutler. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, no, no, a thousand times no. Why not? This is the first step toward obtaining a bill that would be enacted into law that would allow a database full of innocent people for the purpose of being used in criminal prosecutions. People are put into this database which is maintained for prosecutorial purposes. That person has not committed a crime. There is not even a

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crime that has been committed of which that person is a suspect. These types of things I strongly oppose for any reason, but when it comes to what we're talking about, a person has not done anything wrong by purchasing one of these products. The person's name goes into a database for potential criminals for having placed a legal act. If there are people who use cars as getaway vehicles in robberies of banks, should everybody who has a car have to go into a database so that if a license plate number is obtained they just run that against everybody who's in this database who has a car? Now, I know they can go to the Department of Motor Vehicles and get this information, but those lists are maintained for a purpose other than prosecutorial or to suggest that the person whose name is there may have committed a crime. This database is for the purpose of painting people with the brush of being a potential criminal. Why? Because you place a fully legal act. Let the State Patrol do whatever they want to. Let them try to get some senator to offer it. But I don't want a statute that gives state approval or authorization to conduct a study such as this when we know what the result is going to be. And some senators are overwhelmed and unduly influenced by any statement from law enforcement. I don't want to see a logbook of any kind in connection with fully legal actions. If a person goes to five different drug stores and at each drug store makes a purchase that is legal, some persons might say, but when you take them cumulatively a crime has been committed. Let the person have to work hard to get enough ingredients to commit the act that you really want to prevent; namely, the manufacture of methamphetamine. I am not in favor of 100 innocent people being made part of a log or a database to be used to prosecute criminals when maybe fewer than 1 out of 1,000 would even be suspected of having done something criminal. So I will oppose this study, and I hope I've made it clear why I would oppose it. I have to spend so much time in a Legislature where people are supposed to be conservatives, in a conservative state, trying to persuade you why people's privacy...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...ought to be maintained inviolate when they are not suspected of committing a crime. In fact, the

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presumption is that their act did not violate the law or they couldn't have made the purchase in the first place. This person is not purchasing methamphetamine, is not suspected of purchasing methamphetamine, but maybe in the disordered mind of some cop, a long-bearded person dressed like I'm dressed went in and bought some cold medicine, so you're going to run that name and see if he made a purchase anywhere else so you can see if maybe there's a basis for charging that person with a crime. I'm not for it. This amendment is not a jockey riding a horse. This is a horse being placed on the back of a jockey, and I don't believe in cruelty to animals or cruelty to humans. So I'm going...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...to oppose this amendment tooth and toenail. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Kopplin, on the Beutler amendment to LB 117. Senator Kopplin.

SENATOR KOPPLIN: Thank you, Mr. President, members of the Legislature. I opposed the logbook when it was first presented to us before. I find this really difficult to accept this concept. First of all, we just passed an amendment that, you know, we have to have a certain type of identification to buy a legal product. If I'm a crook, I will soon have fake I.D.s that will be very easy for me to pass to an 18-year-old clerk on the busiest day down at Wal-Marts. There's some problems with that. But I, as an honest person, will do that. I will show them my driver's license or whatever, but for the state to sanction gathering all these names in a database so that somebody else, who knows how many other people, can sift through that and say, aha, this one, this one, this one, when the bad guy may be buying all kinds with his little fake I.D. A database of private information of citizens is a terrible thing to come up with. I oppose this amendment very much. It is not worthy of our consideration. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Kopplin. Senator Stuthman.

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SENATOR STUTHMAN: Thank you, Mr. President and members of the body. Realistically, what we have here with this amendment just is so that the State Patrol law enforcement can hopefully come up with a plan and present the plan to who? To the Judiciary Committee next year, next January. What is the Judiciary Committee? It's a member of the legislative body. They are the ones that will make a decision whether it should be proceeding any further from that, so they have an opportunity. It's just to give the State Patrol some authority to try to develop a plan, whether that's going to work. Is it going to work or not? Maybe not, but it's not saying that we're doing it right today. And there is another chance to say no to it if it doesn't look right. But I want to get into it a little bit more, and when Senator Kopplin was discussing his comments, that he think it's private, what have we got today? Say a 21-year-old wants to go buy a keg of beer. He goes to the establishment to buy a keg of beer. What does he have to do? Show his identification. He has to sign for that keg. He signs for that keg so they know who bought that keg, in case something does happen down the road, who is responsible for that keg of beer. They sign it. They get a refund for the keg when they bring it back. Is it just a keg of beer? It's also these little pony kegs, these little, I don't know what they are, enough for two or three people to drink, but you have to sign for those two. Is that an inconvenience? Sounds like it is, but we're doing it right now. So I think we're thinking that we don't want anybody to know anything what's going on, but it's in the law right now with alcohol. What is alcohol? Alcohol is a drug. You buy a keg; you sign for it. Do you sign somebody else's name? Maybe some of them do, but there is a record of when that is going out. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Beutler, followed by six others. Senator Beutler. Senator Beutler, I know you're visiting, but did you wish to speak? If you do, you're recognized.

SENATOR BEUTLER: Senator Cudaback, thank you. I just wanted to indicate that I do have some sensitivity to Senator Chambers' concerns and, yet, in a way, I should never use this word with

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respect to Senator Chambers because the way he thinks is never really old-fashioned, but on the other hand this is a changing world and we are in databases everywhere, all of us innocent people. Every time you take out a bank account you give information and you're on a bank's database and that database goes a lot of different places. Prescriptions, you're all innocent users of prescriptions, those go onto databases. There are insurance databases, motor vehicle databases. Your photograph, thousands and thousands of innocent people are photographed by security cameras when they come into all sorts of different places. But that doesn't mean in today's world that we're violated because we're on...in some kind of database or because our pictures are taken by security cameras. I honor the concern that we need to have laws that put parameters around all these kinds of databases and all these kinds of things, and that would certainly be the case with this one. Secured, it would be a database secured against unauthorized access. Obviously, it's not going to be used against innocent people. It's going to be used only against those who have violated the law. Now, if you don't want to catch those that violate the law, then you shouldn't have this bill whatsoever. But if truly the purpose is to effectuate the law and to enforce the law, then you need to have the computer that puts all the same names in one place at one time instantly and you can see who's buying what where in order to effectuate this law. That's basically my position on this bill. Either do it right so it means something or don't inconvenience consumers and businesses with something that doesn't really work, and it won't really work without an electronic database. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Further discussion? Senator Brown, followed by Senator Dwite Pedersen.

SENATOR BROWN: Mr. President, members, in a follow-up to what Senator Beutler is saying, I have an amendment which we will not get to that creates an electronic log. And we...it utilizes the information that is on driver's licenses. When we passed our digital driver's license legislation, we were quite restrictive about the information that could be captured off the driver's license because of some of the issues that have been raised about privacy. I happen to believe that we should structure it

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in such a way that we best protect individual's privacy and best protect the integrity of the logs. I think there's much more of a problem in having paper logs than if you have an electronic log and hold responsible those entities that are providing the service that no misuse of the logs can happen. Eventually, we are going to need to deal with this issue on the floor. I happen to think that those individuals who are very concerned about any kind of databases should be a party to putting in place the restrictive language that they would like to have. This amendment puts...establishes very strict liability for the companies that develop the software, for misuse of the database which would be maintained through our DMV under the terms of this amendment. It's been very carefully crafted. Now, we are going to have all kinds of policy decisions around this in the future. The...a recently passed piece of federal legislation requires all states to have certain information on their driver's license and collected in a certain way. That's going to be very expensive for states to comply with and it presents some issues, but it's out there. There's also federal methamphetamine legislation that could require some sort of a log. Now, it may be that we aren't ready to take that step right now, but I do want to present the issue to you so that you can be thinking about what things you think should be in place that will make it as protected as possible. There is no way that we should enter into something where that could be misused, or in the case of a paper log where you are making people other than the official agents of the state, i.e., the State Patrol, responsible for the collection of information or through electronic means. And so I have some concerns about the paper log, but I do think that we need to begin looking at ways that we can electronically...to limit the use of electronic, but to allow the use of electronic databases and the pulling together this information. The Transportation Committee will be doing an interim study that has some relationship to this and...

SENATOR CUDABACK: One minute.

SENATOR BROWN: ...I have absolutely no desire to have this be something that is going to be intrusive. It may be that we only use it for purposes of prosecution and not for purposes of law enforcement. Those are all things that we need to discuss, but

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it...but what I want to say to you is it's going to happen, and I think it's best for us to be a part of developing what we think is the right protocols and the right restrictions, and sooner rather than later. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. On with discussion. Senator Dwite Pedersen, followed by Senator Schimek.

SENATOR Dw. PEDERSEN: Thank you, Mr. President, members of the Legislature. Whenever I see this kind of a bill or amendment, the first thing I think--more police state. I told you once, when we first started debating this bill on General File, that methamphetamine is probably the nastiest drug. It is the nastiest drug that I've had to work with people who take it. But I don't think LB 117 is going to stop that at all. A police state is something we got to start looking at, people, is getting into everybody's privacy. Profiling, again, would step up here in a minute, without anything...everybody would...they would be picking up these logs and going through and profiling. And besides that, it's going to cost. Somebody has to look at that. Somebody has to go through all that. And then they come back and say, you want more highway patrolmen, what for? Well, because you passed a law that says we're going to need more. And something that isn't going to help, Senator Stuthman mentioned about the beer kegs. Have you seen teen drinking go down? Have the keg parties stopped? They have not. Let me tell you, they're making as much money on selling keg beer to teenagers now as they ever did, and it's not because we have laws. It's because we aren't taking care of our children at home. The law hasn't changed it at all. I am like Senator Kopplin, Senator Chambers and those who have spoken. This is...it's invasion of privacy and I will not support it. I'd give the rest of my time to Senator Schimek, if she wants it.

SENATOR CUDABACK: Senator Chambers, did you wish to use the remainder of Senator Pedersen's time?

SENATOR Dw. PEDERSEN: Senator Schimek.

SENATOR CUDABACK: I'm sorry. Senator Schimek.

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SENATOR SCHIMEK: Thank you, Mr. President (laugh) and members.

SENATOR CUDABACK: I need a hearing aid.

SENATOR SCHIMEK: I appreciate the opportunity to speak and I have to echo, I think, what our senior member said earlier. To paraphrase him, no, no, no. This is...this scares me. This goes too far. I don't think it would be that useful. And we're asking the State Patrol to develop and present this plan to the Judiciary Committee and then we're going to ask them to implement it. And, you know, maybe we'll ask them to implement it; maybe we won't. Maybe we'll come back here and we'll try to implement it and the whole thing will go down the tube because there's not enough votes for it. I don't want to do this. I don't think it's necessary to do this. I think the bill itself will work without this, and I'm going to vote against it, and I hope that we don't start down this path. You know, there's been a lot of things that have happened at the national level which have made us, I don't believe, feel a lot more safe and secure. Probably some of those things have made us feel more vulnerable. And I think that for a lot of people this may make them feel more vulnerable. I don't think the benefits will outweigh the damage. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Senator Schimek, you have 5 more minutes to use, if you care to use them. She waives her opportunity. Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. I told Senator Beutler that I was appreciative that he brought this amendment forward. I do think that it does not hurt us to look at a study of using this electronic log. We do this very often as in many of the issues that we debate on the floor, is study it a little bit more thoroughly, bring it back, and then make a decision. And I believe that's what this amendment is doing. It gives us the opportunity to look more in-depth on what is actually and will be involved in this electronic log. I can't help but remember when we were having the discussion on General File that we were listing all of the states and talking about what some of their laws were, and I do

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believe maybe ten states were listed. Nine of them used a log. I don't believe that it is going to hurt this, and I will be supporting this amendment because I think it is a good opportunity to at least look at the issue, explore it, and it really would not go into effect until 2007. And I would give the rest of my time to Senator Beutler, if he would like to use it. Thank you.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Stuhr, thank you for the support. I would just reiterate that keep in mind that this is not the final approval. We should not...databases, data collection, data information, obviously it's a new technology, obviously it has enormous power to do good, and it has the power to do evil. But it's like all other technologies. We don't reject the use of the technology simply because we fear some of its applications. The answer to the question is not to be fearful and rejecting, but to be embracing because of the power and the advantages of the new technologies. But our job as legislators is to define parameters, to figure out ways that we can ensure that the technologies are used for good and not for evil, and not to violate our privacy. That's our job. But I think it's a mistake and a kind of retro type of thinking to simply reject the technology of databases simply because they're powerful and new and dynamic. We need to embrace the technologies and channel them and funnel them and focus them in such ways that they work always to our advantage and, as we understand them better, hopefully less and less time, and hopefully finally in the end never to our disadvantage. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. As the agenda states, it is 5:30, or a second before. Select File, 2005 senator priority bills, the Byars division. Mr. Clerk, LB 673.

CLERK: Mr. President, LB 673 on Select File. I do have Enrollment and Review amendments pending. (AM7086, Legislative Journal page 1274.)

SENATOR CUDABACK: Senator Flood. Senator Erdman, would you like to make a motion, please.

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SENATOR ERDMAN: I'll pick up the slack, Mr. President. I move to adopt the E & R amendments to LB 673.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 673. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Mr. President, the first amendment I have on Select File, Senator Beutler, AM1187.

SENATOR CUDABACK: Senator Beutler, to open on AM1187 to LB 673.

SENATOR BEUTLER: Senator Cudaback, Mr. Clerk, I'd ask unanimous consent to substitute AM1587. Did I get that number right, Senator Louden?

SENATOR CUDABACK: Senator Beutler, are you substituting?

SENATOR BEUTLER: Yes.

SENATOR CUDABACK: Any objection? So ordered.

CLERK: Mr. President, Senator Louden, AM1587. (Legislative Journal page 1488.)

SENATOR CUDABACK: Senator Louden.

SENATOR LOUDEN: Thank you, Mr. President and members of the Legislature. This amendment incorporates suggestions that were made during floor debate, through amendments that were filed and then withdrawn. I will briefly mention the substance of the changes, and then I will be happy to answer any questions. There are two types of changes proposed by AM1587--substantive, and clarifying. One substantive change is the elimination of a notice that counties that could give. Other substantive changes are made in the role assigned to the Department of Agriculture. The bill originally had two different notices that counties could issue to landowners. One notice states that the landowner has a duty to manage colonies, and that the county will do the management and charge the landowner if the landowner does not

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comply. This notice is retained in the bill. The second notice states that the landowner has a duty to manage colonies, and that failure to manage will lead to a fine. This notice is eliminated by AM1587, because this is a management plan, so fines we didn't believe would be conducive to the way the plan would be instigated. The reason for elimination is this. The notice results in a fine, rather than management, and management is the goal of LB 673. This change focuses the bill on getting management done, and it reduces the cost that counties may incur if county attorneys have to prosecute someone for failure to pay a fine. The bill originally required the Department of Agriculture to do a number of things, such as investigate the subject of prairie dogs, cooperate with other entities, and issue rules and regulations. AM1587 makes these activities permissive rather than mandatory. The bill originally authorized the Department of Agriculture to employ people to carry out the act. AM1587 removes that authority. This changes...reduces the burden on the department, with a corresponding reduction in potential costs for the department. These two changes--elimination of one of the two notices, and reducing the Department of Agriculture's role--make up the substantive amendments contained in AM1587. The remaining changes are, in my opinion, clarifying. For instance, the definition of a person originally included the federal government. We know that the state cannot tell the federal government what to do, and so the federal government is removed from the definition of "person" by AM1587. As another example, the definition of "colony" clarifies that a colony is both the burrows and the animals that live in the burrows. And it also includes the Latin name of the black-tailed prairie dog, leaving no question as to which species is subject of the bill. Other clarifying changes include "landowner" to "person" throughout the bill. And of course, LB 673 is intended to provide a management plan for the black-tailed prairie dog. The bill is drafted to allow, and not require, counties to adopt black-tailed prairie dog management plan. And not all counties in Nebraska have a problem with black-tailed prairie dogs. That is the reason the underlying bill, LB 673, is so drafted that counties may adopt the plan, if they have areas that require management, to allow the ecosystem to support a range of wildlife and agriculture. I think that AM1587 strengthens

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LB 673. And I would ask your adoption of it. I'd be happy to answer any questions. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. You've heard the opening on AM1587 to LB 673. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, I want to divide the question.

SENATOR CUDABACK: Senator Chambers, why don't you and Senator Louden come forward, please. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Mr. President, I withdraw my request that the question be divided.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, please.

CLERK: Mr. President, Senator Chambers would move to amend Senator Louden's amendment by striking Section 1, which consists of lines 1 through 5, of AM1587. (FA285, Legislative Journal pages 1672-1673.)

SENATOR CUDABACK: Senator Chambers, to open on your amendment.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm going to explain why this approach is being taken. I have been working on other matters that have been before...(laugh) I can see how much interest there is in this bill. I shouldn't have looked around the Chamber. And I see Arnie is even bugging out on me. But that's okay. I want to make a record. It was...I was trying to incorporate into the committee...I meant, the E & R amendments, the amendment that Senator Louden is offering to the E & R amendments. What we're looking at now is the amendment that Senator Louden has offered. And his amendment is numbered AM1587. If you look at your gadget, then it is now at the top of the list of amendments. Because there are several portions to it, and I had not had the opportunity to examine these, I had asked to divide the question, in order to have a manageable subject, rather than having only three opportunities to speak on the entire amendment. Rather than try

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to divide the question--because we were up there trying to do it and it's really too difficult--some of these parts of Senator Louden's amendment are merely technical, meaning, in some instances, all that's done is to restate what is already there, but it is restated in a way that may be clearer. Those will not be of any difficulty. But I could not, in the brief time I've had to look at this amendment, make a determination of which those are, or the significance of the changes that seem to just be technical. So the approach I'm going to take is to make a motion to strike each one of these numbered items in Senator Louden's amendment. And if you have it before you...you can print it out from your gadget, but if you don't, there are 11 items. And I'm going to go through them and find out just what it is that we're dealing with. So I would like to ask Senator Louden a question or two...

SENATOR CUDABACK: . Senator...

SENATOR CHAMBERS: ...on the first item.

SENATOR CUDABACK: Senator Louden.

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, on this I think I was able to follow you. We go down to line 8 and in that line, in order to make it clear precisely which species is being considered in this bill, you will insert the Latin name or designation given to this species. Is that true?

SENATOR LOUDEN: That's correct.

SENATOR CHAMBERS: Then the lines 7 through 9, taken together, are defining what the word "colony" means. So, in addition to the existing language which says that the colony means the burrows and tunnels created by the these animals, it also would include the animals who reside in those burrows. Is that correct?

SENATOR LOUDEN: That's correct.

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SENATOR CHAMBERS: Okay. Then, in line 19, still on page 1, as you explained it, and I agree with you, and we've kind of discussed this on General File, the state cannot dictate anything to the federal government, so in lines 16 through 20, where we have a definition of "person," in line 19, the federal government is included, and your amendment would strike "the federal"...the words "the federal government" from that definition of "person." Is that correct?

SENATOR LOUDEN: That's correct.

SENATOR CHAMBERS: Then, in line 22, you would strike the word "dogs," which appears at the end of line 22, and insert "colonies," so it would...

SENATOR LOUDEN: Yeah, it would insert "dog colonies."

SENATOR CHAMBERS: Oh, so it would read "for the management of black-tailed prairie dog colonies," instead of "the management of black-tailed prairie dogs."

SENATOR LOUDEN: Yeah.

SENATOR CHAMBERS: We're talking about managing the colony. Is that correct?

SENATOR LOUDEN: Correct.

SENATOR CHAMBERS: Thank you. That's all I will ask you. Members of the Legislature, I'm not going to take this motion to strike to a vote, because I'm able to grasp the meaning of what is done here. And I'm going to have Senator Louden work with me through it. I need to make it clear what my view on this bill is. I am opposed to it. The thrust of it is to create a set of circumstances where a county may pass a resolution to participate in this program, which Senator Louden describes as a management program. I see it as an eradication program. I have some amendments which I will probably offer. But before that, I need to be clear on what we have in the bill. I'm unable to write into my copy of the E & R amendments the language that Senator Louden is offering. So this can get a little difficult

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for me. So after we get through with his amendments, I may then go to the E & R amendments, which have become the bill, and move to strike various sections from the E & R amendments, because they become the bill. I want to defeat this bill. I want to make that clear. Amendments that I would offer might clarify. Some of those issues I raised on General File, Senator Louden has incorporated into his. So while I'm in this opening, I'm going to see if there's anything I need to sign, so that we can continue to roll right along. Mr. President, I would like to ask Senator Louden a question or two, if he would respond.

SENATOR CUDABACK: Senator Louden.

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, if this bill does not pass this session, there is not going to be any catastrophe, is there?

SENATOR LOUDEN: Say that again, Senator?

SENATOR CHAMBERS: Okay. If this bill does not pass this session, that will not result in a catastrophe to the state. Isn't that true? Or is that true?

SENATOR LOUDEN: Well, I...okay, when...it depends on what you call catastrophe to the state. There are some people that can probably utilize this better and have a little bit more management and control over some of the animals out in the western part of the state where they are a problem. It is a problem out there. And of course, I've been working with the National Forest Service, and they're working at the same time on their management plan. And this is what I'm trying to do, is coordinate this plan along with theirs.

SENATOR CHAMBERS: So we can take this step by step. Any person with prairie dogs on his or her property can deal with them in any way he or she chooses, generally speaking. Is that correct?

SENATOR LOUDEN: That's correct, yes.

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SENATOR CHAMBERS: So what this bill does is to make it possible for a landowner with property A to find a way to make the landowner of property B assume the cost of managing the prairie dogs on property A, which will be alleged to have gotten there from property B. Is that true? It's to create a set of circumstances where...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...one landowner can make another landowner liable for the prairie dogs on his or her property. Is that true?

SENATOR LOUDEN: I suppose you could describe it that way. It's highly unlikely. But it's more of a management program on federal and state lands. And of course, there will be instances where people that are...do not control them at all, that they will be spreading over onto someone else's property. That's...I suppose you could describe it that way. That's the rough side of it.

SENATOR CHAMBERS: Well, my time is probably up. But my light is on. I'll wait till I'm recognized.

SENATOR CUDABACK: You've heard the opening on FA285. Senator Louden.

SENATOR LOUDEN: Thank you, Senator Cudaback. As we brought this forwards, as we worked on this bill through the course of the session, there's been language that's been found to...probably wasn't quite clarifying. And we wanted to make no mistakes on what we wanted to do with this bill. Wanted it to be a management plan that would be coordinated with the National Forest Service management type plans, and is something that would not be mandatory on counties or any particular people if the counties didn't adopt these plans. It isn't something that we would want to cause any undue hardship in areas that have...don't have any problems with the black-tailed prairie dogs. This is the reason it was brought forward in the manner that I have done it, so that it is an optional program for counties. This way, they have the problems. There's probably

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about 60 counties or more that have no prairie dogs at all and no problems with them. There are some areas, such as, I think it's Doane College, around Crete, that has a small prairie dog town, and they control that thing and keep it into their area. And my understanding is, they use it for some type of educational purposes and study of the animals. So this isn't something...and that's the reason it's been called a management plan, is because we hope that there will be ways that these things will not be eradicated. Now, up until here in the early nineties or sometime, the prairie dog in Nebraska was supposed to be eradicated by the 1st of November. And, I mean, this was something that just got them all. So we haven't...that, of course, isn't exactly the proper way to handle wildlife. There are areas where they're not bothering anyone, and consequently we usually leave them alone. On our ranch where we are, we have badgers. We don't have prairie dogs, because we have badgers. But ordinarily, the badgers that are up in the hills and areas where they don't bother that much, we let them have their time and go about it. So until they start coming down in the chicken house or something like that, why, there's usually not a problem. So this is the same thinking on the prairie dogs. If they aren't a problem, then why bother them? And...but we do need something to coordinate the management plan with the Forest Service in some of the areas out in the western end of the state, where there are huge losses in some of the...when we had such dry weather last few summers, and the rangeland has been devastated by them. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, what this bill really does, in effect, is to put the burden on the individual landowner to manage--I'll use Senator Louden's word--to manage prairie dogs. And instead of just using pronouns, like his property or her property, and it could get mixed up, I will designate the property owners by a letter. Property owner A alleges that there are prairie dogs on her property because property owner B has prairie dogs which have migrated from property owner B's land to property owner A's land. Property owner A is going to try to have property owner B saddled with the cost of removing the animals from property

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owner A's land. Now, I'd like to ask Senator Louden a question or two. And I'm going to wear him out, having him stand up and sit down.

SENATOR CUDABACK: Senator Louden, would you respond?

SENATOR CHAMBERS: Senator Louden.

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Here is the way I'm laying out this hypothetical situation. Instead of saying property owner A and B, I'm going to give you and me some play in the transcript. Senator Louden says that Senator Chambers has prairie dogs which are leaving his land and coming onto Senator Louden's land. If a county has decided to be a part of this...before I go into that, let me ask you a question. The only way this act will have application is if a county has passed a resolution to participate in this program. Is that correct?

SENATOR LOUDEN: That's correct.

SENATOR CHAMBERS: The only property owners who could take advantage of this are those who live within a county where the board has passed the resolution to participate. Is that correct?

SENATOR LOUDEN: That's correct.

SENATOR CHAMBERS: Okay. So now I can give my example. Senator Louden says, Senator Chambers has prairie dogs which have come from his land onto my land, and I want him to pay the cost of removing these animals. Could that approach be taken by Senator Louden against Senator Chambers, under this bill?

SENATOR LOUDEN: Now, you're asking whether I would have to remove them or destroy them or something on your land? Or do you...

SENATOR CHAMBERS: No, Chambers...

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SENATOR LOUDEN: ...do you want...

SENATOR CHAMBERS: We're saying that they came...you're going to say they came from my land onto your land. Since that is what is being said happened, you want to make me responsible for getting those animals off your land. Is that the way the bill works?

SENATOR LOUDEN: Not exactly. I would say it works more that you would be responsible to stop any encroachment of your prairie dogs on your land. That was the idea of the bill, is to stop the encroachment.

SENATOR CHAMBERS: But...okay, but...

SENATOR LOUDEN: But if they've already left or gone, then that would probably be...they're wild animals, so I suppose the landowner that they're on would have the duty to take care of them on his own land if he wanted them off of there. But as far as any encroachment, why, it would be up to you to stop the encroachment if you didn't want to control them on your own property.

SENATOR CHAMBERS: How would you prove that the Chambers prairie dogs came onto Louden land? How would you prove that?

SENATOR LOUDEN: Probably stand out there and watch them run across the fence.

SENATOR CHAMBERS: And it would be your word against mine, wouldn't it?

SENATOR LOUDEN: Other than...

SENATOR CHAMBERS: You say they did, and I say they didn't.

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: Other than when you would go ahead and contact the county or whoever the authorities would be to decide the matter.

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SENATOR CHAMBERS: And would the county then send somebody out there to watch and see where these prairie dogs went?

SENATOR LOUDEN: Well, they would be...I'm sure there would be some type of inspection. That's for sure.

SENATOR CHAMBERS: Well, suppose these tunnels go from my land to your land and the prairie dogs move back and forth. Who is responsible?

SENATOR LOUDEN: Well, I imagine once you get them controlled for...near your land or something, why, there would probably be a way that you can control them, plug the tunnels up if you didn't want them on your property, or whatever.

SENATOR CHAMBERS: Okay. So you plug up the tunnels that are open on your property. But that's not killing these dogs, is it? They could tunnel off some other direction, couldn't they?

SENATOR LOUDEN: Well, if...the ones on your property, that's up to you to decide what you wanted to do with them, whether you (inaudible)...

SENATOR CHAMBERS: No, I'm talking about the ones on yours. You don't want them on your land, and you wanted to say that I was...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...responsible, but you couldn't prove that...oh. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Howard, followed by Senator Chambers.

SENATOR HOWARD: Thank you, Mr. President, members of the body. If I may ask Senator Louden a question or two?

SENATOR CUDABACK: Senator Louden, would you respond?

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SENATOR LOUDEN: Yes.

SENATOR HOWARD: Senator Louden, I'm hoping that you can set my mind at ease about a few of things. And I've been getting quite a few e-mails about this also. But can you tell me, does LB 673 require oversight by any qualified wildlife resource manager?

SENATOR LOUDEN: Does it declare an oversight by anyone, by a wildlife manager?

SENATOR HOWARD: A wildlife resource manager.

SENATOR LOUDEN: No, there's nothing in that bill that sets that up at the present time, unless the county or somebody decides to hire someone. I mean, that would be on their own prerogative if they wanted to. And that's what some of the money is appropriated for, is if there needs to be some management plan or something put in place.

SENATOR HOWARD: Well, the concern that I've been receiving has been that, without a resource...a wildlife resource manager, the plan could cause negative impacts on other species that could result in ecosystem damage, and also that the lack of proper oversight could lead to violations of environmental protection regulations regarding the use and application of poisons. Do you have a concern for that?

SENATOR LOUDEN: No, Senator Howard, not necessarily. Because we have coyotes out there. Some years, rabbits are real thick. They have problems like that. There's no one at the wildlife resource manager over watching over the coyote population, and they're controlled. They've never been eradicated. So, no, I don't have a problem with that, not out in your range country like that. There's usually enough of them in areas that aren't bothered that there's always some left over. As far as the ecosystem, it depends on who you're talking to on what kind of ecosystem you're talking about. The ecosystem they usually talk about is black-footed ferrets, or burrowing ground owls. And I forget some of the other species. They should include rattlesnakes, too. But your burrowing ground owls will use badger holes and other holes. They don't just necessarily

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thrive...or, have to have a prairie dog town in order to live. Your black-footed ferrets, they've probably been disappeared for...oh, out of the Sandhills area where I live, I'm sure there hasn't been any black-footed ferrets in that country since, oh, probably, 1920 or so, when my dad has mentioned seeing them back there in the late twenties or so, when there were a lot of prairie dogs and other animals around for them to live off of. So this is something that they're mostly confined to small areas, now usually up into Wyoming, and I think there is an area maybe in South Dakota someplace.

SENATOR HOWARD: Are you concerned about the bird population, the migratory birds, the endangered birds?

SENATOR LOUDEN: Usually, they do...the poisoning is kind of controlled by the federal government. There's federal guidelines on what time of year they can be poisoned and what can be used. So...I mean, what's legal to use. And I'm not talking about what somebody might illegally use, or something like that. That's another problem. But the poisons that are used, I think, have to be done in a certain time of the year, so that...when migratory birds aren't coming through. And I think there's a certain kind--I should have that around here--a certain kind of rodenticide that is used at certain times of the year. It's all laid out in federal...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...guidelines on what can be used.

SENATOR HOWARD: I don't know if you're aware of this, but I wanted to share with you in the brief time I have left an e-mail I received regarding federal law enforcement officials investigating the deaths of three horned larks found near an area where a state contractor had placed prairie dog poison north of the Badlands National Park.

SENATOR LOUDEN: What kind of larks?

SENATOR HOWARD: They're described as horned larks.

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SENATOR LOUDEN: Yeah, horned larks. Yeah. When, lately? Because usually horned larks, they...the young ones are already hatched out in April or May. They come in very early in the year and they're the first young birds that you see around. And of course, it could be stormy weather or whatever that would get horned larks. But I don't know if you've ever seen them or not, but they're a little gray bird that, oh, many a times before the grass is even started, why, they're out around, and what they live on, by the time...

SENATOR CUDABACK: Time, Senator Howard.

SENATOR LOUDEN: ...they get up, I don't know.

SENATOR HOWARD: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Howard. Senator Chambers. I'm sorry, Mr. Clerk. I just about blew that one, too, like I did yesterday. Mr. Clerk, items for the record.

CLERK: Thank you, Mr. President. Amendments to be printed: Senator McDonald, LB 332; Senator Brown, Senator Dwite Pedersen, Senator Synowiecki, Senator Redfield and Senator Dwite Pedersen to LB 117. That's all that I have. Thank you. (Legislative Journal pages 1673-1676.)

SENATOR CUDABACK: Thank you, Mr. Clerk. And I apologize for scaring you. Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Senator Louden. Senator Louden, I would like to ask you...

SENATOR CUDABACK: Senator Louden.

SENATOR CHAMBERS: ...another question or two.

SENATOR CUDABACK: Senator Louden.

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, let's say we've reached a set

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of circumstances where Chambers has been found to be responsible for the prairie dogs on Louden's land. But there are prairie dogs on Louden's land from Chambers' land. Chambers can be made to do something about the prairie dogs on Louden's land, under this bill. Isn't that true?

SENATOR LOUDEN: I don't think so. I think you have to take care of them on your land so they don't encroach. But like I say, they're wild animals and already over there, and I don't know who...how you can claim them or anything. So I think when you already have had them encroach on your property, the way the system usually works, is they ask you to do something to stop the encroachment from your property.

SENATOR CHAMBERS: So let's say this fence that you had mentioned, I just string a fence between your property and my property. You still have prairie dogs on your property. Isn't that true?

SENATOR LOUDEN: Until I decide whether I want to eradicate them or what I want to do with them, yeah, I suppose there would be.

SENATOR CHAMBERS: Well, suppose you poison all those on your property, and without going into the issues that Senator Howard raised because I share her concerns, but just so I can get to the question I want to ask you. You poison or you vacuum out or some methodology is used where you get rid of all of the prairie dogs on your land, and it's shown that your land is clear of prairie dogs. Then a month down the road prairie dogs begin to show up on your land again. And let's say it can be established that those dogs have come from my land. Can I then be made responsible for eliminating those prairie dogs from your land that have been shown to have come there from my land? Or do you still have the responsibility for those that have come onto your land from my land?

SENATOR LOUDEN: Well, the way the bill is written, and you're responsible to keep them from encroaching, so you have to do something to control them to keep them off. But, like I say, when they're wild animals like that, I don't know how...they're not branded unless you're branding them or something.

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SENATOR CHAMBERS: Or they...or see, with mine, remember, if I holler a certain name, all mine come running.

SENATOR LOUDEN: Well, you'll be able to keep them home then, I guess.

SENATOR CHAMBERS: And what is that name that I holler, if you remember?

SENATOR LOUDEN: I...

SENATOR CHAMBERS: Oh, Belevedere.

SENATOR LOUDEN: I'm familiar with prairie dog calling.

SENATOR CHAMBERS: Well, here they come now. (Laugh) Okay, here's what I'm getting to, Senator Louden. We have a situation where there were no prairie dogs on your land but there are some on mine. Prairie dogs from my land wind up on your land, and let's say we can prove that. You had no prairie dogs. It can be proved that they came from my land to your land, and let's say I even admit it. So the issue that I'm putting to you is this. Am I responsible to do something about the prairie dogs that are now on your land that came there from my land?

SENATOR LOUDEN: Your question is whether you're responsible to eradicate the prairie dogs on my land. Is that the question?

SENATOR CHAMBERS: Yes. Or to pay for whatever steps you go through to have them...

SENATOR LOUDEN: Okay. The way the bill is written, no, you're responsible to keep them on your land and the management process on your land. That's part of the reason why the bill is written the way it is because of encroachment from properties where...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...people do not want to control them.

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SENATOR CHAMBERS: And Senator Schrock went by and he...this is what he said my Belevedere would be singing when he got to you, "This land is your land but now it's my land." (Laugh) So let's say that mine have gotten onto your property. You're telling me that I have no liability...let's say you want to get rid of them and you have to pay \$1,000 to get rid of them. I will not be responsible to reimburse you for the cost of your getting rid of the prairie dogs that came from my land to your land. Is that what you're saying happens under the bill?

SENATOR LOUDEN: I think that's right, yeah. The problem is that if you don't do something about them on your land, that's where the county has the authority to do something about the prairie dogs on your land. It's up to you to control them on your own property, and if you wish not to and they are encroaching on other people's property...

SENATOR CUDABACK: Time, Senator. Senator Chambers, that was your third time and there are no lights on. I will recognize you to close on FA285.

SENATOR CHAMBERS: Thank you. And as I said, I'm not going to take this one to a vote. This is what I'm trying to get clear, because it's not clear to me from the bill, and it's been a while since I read it. Senator Louden seems to be correct, based on the language of the bill, if the county has to come in and do something about these animals that I will not control on my land. Now here's a question, Senator Louden, I would like to ask you. Senator Louden,...

SENATOR CUDABACK: Senator Louden.

SENATOR CHAMBERS: ...I would like to ask you another question.

SENATOR CUDABACK: Senator Louden.

SENATOR CHAMBERS: Let's say we've reached the point now where it's clear that I am not going to do anything about these prairie dogs on my land, so you notify the county, file the complaint. The county determines that these prairie dogs are coming from my land to your land. I've made it clear I'm not

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going to do anything about them, and the county does something to manage them. We won't even say what they do because this is my question. The county expends, let's say, \$1,500 to do whatever it has done. If I refuse to pay the county, do they place a lien against my property for the payment of that money?

SENATOR LOUDEN: I guess you'd call it a lien. It would go as the same way as a tax. I mean, you'd have to pay it just like your property tax, as part of your property taxes to pay for it. Yeah, that's written in the bill.

SENATOR CHAMBERS: Okay, but it becomes a charge against my property, even if I don't want to pay the cash. And if I don't pay it, at some point could they foreclose on my property to get that amount of money from me?

SENATOR LOUDEN: Well, it would be like selling it for taxes. I mean, you would pay that right along with your taxes. I think it would be added onto your tax bill.

SENATOR CHAMBERS: But if I paid only the amount that could be shown as my property taxes and I said this other thing you're charging me for getting rid of these prairie dogs, I'm not going to pay that, how many years would it be before the county would take action to sell my land, to get the amount of money that they expended to get rid of the prairie dogs which I won't pay?

SENATOR LOUDEN: Well, I think it would be like your tax title. What is it, five years that you...

SENATOR CHAMBERS: Let's say five years. With interest...

SENATOR LOUDEN: I'm not sure. I've never had to buy any land for tax title. I've always had to pay my taxes every year.

SENATOR CHAMBERS: But let's just say five years so we can get to what I'm trying to arrive at. Under this bill, the county, applying the existing law to recover money owed on property, in taxes or other assessments, but which are not paid, those amounts are not paid, under this bill, if the county expended \$1,500 to manage the prairie dogs on my land, after five years

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they could sell my land, take out their \$1,500 and give me the remainder. Is that the way it would operate?

SENATOR LOUDEN: Well, the same way, just like a weed district or noxious weeds or even in Omaha where you are, if you have a rat problem, the city comes in and eradicates the rats. They stick it on your property, and you either pay it or they put it on your tax bill.

SENATOR CHAMBERS: And eventually, they...

SENATOR LOUDEN: This isn't anything that's new. This happens all the time in the way our counties and cities are put together. This isn't any kind of new language or any new...anything that came out of Revelations.

SENATOR CHAMBERS: Right, but the new thing, it seems like the punishment and destruction of my poor little prairie dog friends is something that came out of Revelations. But, Senator, the new thing in this bill...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...is that the individual property owner is going to be required to control these wild animals, whereas that's not the case without this bill. Isn't that true? So the new thing is to make the property owner liable. Isn't that true that is new?

SENATOR LOUDEN: Okay. The new thing is to have a management program in place so that these animals aren't running loose all over everybody, and so that there is some control on them and some management of them. That's the new thing. The part in there about having the county have the authority, someone has to have the authority to uphold whatever law or whatever you put into place, and this is the way it's done. It's done on a county/local level, and this seemed to be the simplest way to do it, that there...that's the reason we took out the fine so that there's no prosecution or anything. Instead of having fines and lawyer fees and things like that, the idea was to go ahead and probably do some management with them and pay the bill. I'm

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sure you could never...

SENATOR CUDABACK: Time, Senator.

SENATOR LOUDEN: ...hire a \$1,500 lawyer for very long.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: Mr. President, I will withdraw that pending motion.

SENATOR CUDABACK: FA285 is withdrawn. Mr. Clerk, next motion.

ASSISTANT CLERK: Mr. President, Senator Chambers would offer FA286. (Legislative Journal pages 1676-1677.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA286.

SENATOR CHAMBERS: Thank you. Mr. President, because I was engaging in discussion with Senator Louden, I'm going to ask that he accompany me on an odyssey through his amendment to the committee amendment...I meant the E & R amendments to see if I understand what they do. So, Senator Louden, do you have your copy of your amendment?

SENATOR LOUDEN: Yes, I do.

SENATOR CHAMBERS: Okay. Now, I'm on line 6, page 1 of your amendment which is number 2. That's where I'm going to start.

SENATOR LOUDEN: Okay.

SENATOR CHAMBERS: We're still...okay, we on page 2 in line 1. After "director," we would insert the words "pursuant to the act." So we're talking about the promulgation by the director of the Department of Agriculture, I presume, some regulations, but they would have to be adopted pursuant to this act because that's the new language we're adding. Correct?

SENATOR LOUDEN: Yeah.

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SENATOR CHAMBERS: Okay, on line 1. Then in line 2, after "county," we would...we're talking about a resolution, and the current language says: The county shall assume the authority and so forth. We would insert the word "board" after the "county" so it's the county board that assumes that authority. Is that the way we understand this?

SENATOR LOUDEN: Right.

SENATOR CHAMBERS: Then in line 4, we would strike two words, "or controlling." So then it would read: The act shall be applicable to persons owning property within the county. But if somebody controls that property, the act would not apply. Is that true?

SENATOR LOUDEN: Well, it would apply to the owner of the property, is what the clarification was, rather than someone who's leasing land. They wouldn't be the ones exactly be responsible for controlling the...managing their prairie dogs on there. It would revert back to the owner of the property; have to because if they didn't want to do it, the...we did away with the fines so if you were going to assess it to anybody, you'd have to assess it to the property, and they'd be the owners of the property.

SENATOR CHAMBERS: So it applies only to the owner...

SENATOR LOUDEN: Right.

SENATOR CHAMBERS: ...with this new language? All right. Then in lines 8, 14 and 25,...oh, we would strike the word "dogs" and insert "prairie dog colonies" so it's clear that that's what we're talking about dealing with, the county...I meant the prairie dog colony.

SENATOR LOUDEN: Yeah, that...they use...when this was written before, we had prairie dogs all over the place, and it really should be prairie dog colonies.

SENATOR CHAMBERS: Okay. That's all I will ask you. Members of

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the Legislature, in this part of the E & R amendment, which Senator Louden is amending in the way that he and I just discussed, the county...let me read something else before I ask that question...before I proceed. I need to ask Senator Louden a question.

SENATOR BAKER PRESIDING

SENATOR BAKER: Senator Louden, would you respond, please?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: When we are on page 1, in line 21 it says a county may adopt by resolution. Should we say in that line a county board, on page 1, in line 21, unless that's covered someplace else anyway?

SENATOR LOUDEN: Now, you...let's see. I got to...

SENATOR CHAMBERS: Okay. Go to...look at the E & R amendments. That's what I'm looking at now.

SENATOR LOUDEN: Okay, yeah.

SENATOR CHAMBERS: In line 21, it says a county may adopt by resolution. After that word "county," we should probably have inserted "board" also, shouldn't we? Because it's the county board that would adopt by resolution. Or do we just want to say the county?

SENATOR LOUDEN: Where are you at? I...

SENATOR CHAMBERS: Okay. I'm on the E & R amendment, AM7086.

SENATOR LOUDEN: Yeah.

SENATOR CHAMBERS: Okay. Now...

SENATOR LOUDEN: And on what page?

SENATOR CHAMBERS: Page 1.

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SENATOR LOUDEN: Oh, on page 1.

SENATOR CHAMBERS: Uh-huh.

SENATOR LOUDEN: Okay, okay. Sorry about that.

SENATOR CHAMBERS: That's all right.

SENATOR LOUDEN: I turned the page. I was done when we turned the page.

SENATOR CHAMBERS: I know. That's what had happened to me. Then I went back to page 1, so I could get to the language on page 2. In line 21, it says a county may adopt by resolution. We probably should have put "board" after "county" here also, shouldn't we? The county board may adopt by resolution.

SENATOR LOUDEN: Probably so.

SENATOR CHAMBERS: Okay. But that's just a minor point. I just thought I'd call that to your attention because it may be something to be looked at. That's all I will ask you now because I'm going to comment on this Section 3 of the committee amendment...of the E & R amendment: A county may adopt by resolution and carry out a coordinated program for the management of black-tailed prairie dogs on property within the county consistent with this act, and they name it, and rules and regulations adopted and promulgated by the director, I believe who is the director of the Department of Agriculture. When a county, county board, adopts such a resolution, the county shall assume the authority and duties provided in the act, and the provisions of the act shall be applicable to persons owning property within the county. It seems to me that the persons owning property in the county would be the ones who have prairie dogs on the land that they own within the county or the property. But again, that's a somewhat minor discrepancy, if that's what it could be called. The way the language is written, if the county board adopts a resolution to implement one of these programs, the county shall assume the authority and duties provided in the act. Here's what I need to ask Senator

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Louden, if he will answer a question or two. Senator Louden.

SENATOR BAKER: Senator Louden, would you answer a question, please?

SENATOR LOUDEN: Okay.

SENATOR CHAMBERS: Now that language...and I'm looking at the committee amendment now, I meant the E & R amendment, not yours...on page 2, in line 1, tell me when you're with me.

SENATOR LOUDEN: In the AM7086 on page 2?

SENATOR CHAMBERS: Yes, line 1.

SENATOR LOUDEN: Okay. Yeah.

SENATOR CHAMBERS: When I county adopts such a resolution, the county shall assume the duty...the authority and duties. Here's the question I want to ask you. Let's say that you have filed a complaint against me because the prairie dogs are coming from my land to yours. I've made it clear I'm not going to pay to have these animals taken care of, and you go to the county and they agree with you that I'm responsible, but they're not going to do anything about this because they say they don't have money. If this says the county shall assume these duties, and it's the county's duty to take action on my land to manage these dogs when I refused to, could you sue the county to make them take that action? Because they passed the resolution, when they do that, the statute imposes on them these duties. If they don't assume them, can you sue the county to compel them to carry out their duties under this act?

SENATOR LOUDEN: Well, I would presume, because if it wasn't that they said they didn't have any money because it...

SENATOR BAKER: One minute.

SENATOR LOUDEN: ...isn't their money they're using. They would assess the property to get the job done. So I'm not that of a school of a lawyer, but I would presume something could be done

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legally to make them uphold the law. I mean, county officials have to uphold the law, and that's what they swear to do when they...on January, whenever they take office.

SENATOR CHAMBERS: Are these county officials aware of the fact that they can be sued under this bill, if there are more complaints than they have money to carry out their duties for? For example, ten people had filed complaints against individuals who won't control their prairie dogs, and the county says, well, we can't go on that land and make them...and do any management because we don't have the money. Under this bill, the county could then be sued by all ten of these people with a complaint, couldn't they, couldn't the county?

SENATOR LOUDEN: I don't know, Senator. You'd have to ask somebody into law what...I don't know whether...

SENATOR BAKER: Time.

SENATOR LOUDEN: ...they sue the county or they just...or they sue them for malfeasance of office. I don't know how that would work, but it is the duty of the county to do it if...

SENATOR BAKER: Time. Thank...

SENATOR LOUDEN: ...they've adopted the plan.

SENATOR BAKER: Thank you, Senator Chambers. That was your opening, and your light is next. You're recognized to speak.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I see Senator Don Pederson sitting over there, keeping a low profile, but I want to ask him a question or two.

SENATOR BAKER: Senator Don Pederson, would you respond, please.

SENATOR D. PEDERSON: Yes, I will.

SENATOR CHAMBERS: Now, Senator Don Pederson, I did not write this bill, but under the language of this bill, if a county board passes a resolution to participate in this prairie dog

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management program, the statute says it shall assume the responsibilities and duties under the act. When the word "shall" is used, that makes it mandatory. Would you agree?

SENATOR D. PEDERSON: That's right.

SENATOR CHAMBERS: Under this bill, if a property owner has been found to be responsible for dogs encroaching from his or her land to somebody else's land, the county can give that person notice and order something to be done. And if that person refuses, the county, in the appropriate way, can enter that land and take steps to eradicate the problem.

SENATOR D. PEDERSON: I would say it's required to do that.

SENATOR CHAMBERS: Now, let's say that there are ten people who filed complaints, and the county does not have the money to pay for these activities to be done. Could the persons with the complaint file an action to compel the county, despite its claim not to have the money to carry out its duties under this bill?

SENATOR D. PEDERSON: I assume that they would have the right to do it directly, but certainly it's an obligation of the county that they have assumed. And I assume that it would be permissible for the individual to bring the action against the county to enforce it.

SENATOR CHAMBERS: Thank you. Now, I will ask Senator Louden a question. Senator Louden, do you think the county officials are aware of that?

SENATOR BAKER: Senator Louden, would you respond, please?

SENATOR LOUDEN: Oh, I'm sure they are because there were some county officials, you can see your lobbyists out there, that the NACO was some of them that was...weren't for this, and we pointed out to them that if they didn't want to get into that predicament, then don't adopt the plan. So that's the reason it isn't mandatory that they adopt a plan. It's an optional plan.

SENATOR CHAMBERS: But here's what I'm dealing with. A county

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which has adopted the plan, not realizing that there would be so many complaints, and the complaints are coming because the county is not going on the land of these people who are not managing their prairie dogs. The county says we don't have the means to pay to have those dogs managed, so we can't do anything. And the ten people who have filed complaints and were found to be right that these other people should manage their dogs, and they said, we want you to go on that land and take steps to manage those dogs because the owner will not. And the county says, well, we don't have the money. Those ten people can sue the county and the county is going to have to find a way to pay. Are these counties that would choose to go into this program aware that they can be sued in this fashion, and compelled to carry out this management program? Do you think they're aware of that?

SENATOR LOUDEN: Oh, I think so, yes.

SENATOR CHAMBERS: Were you aware of it before we had this discussion?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Then why did it take you so long to answer the questions and why did I have to ask so many of them?

SENATOR LOUDEN: Okay. Okay. I guess because of the way you was asking the questions and which ones you were. I said whether or not I knew they had to have the duty to do it. I told you that, that it was...

SENATOR CHAMBERS: Right, but...

SENATOR LOUDEN: ...the county's duty to it.

SENATOR CHAMBERS: But I'm asking...

SENATOR LOUDEN: Now you asked me whether or not they could sue the county, and I said I didn't know whether they could sue the county or whether they would sue the county board for malfeasance of office.

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SENATOR CHAMBERS: But here's the question.

SENATOR LOUDEN: Senator Pederson had clarified that.

SENATOR CHAMBERS: Here's what I'm asking you. Do you think the county board members are aware of the fact that they can be sued under this bill if they pass such a resolution?

SENATOR BAKER: One minute.

SENATOR LOUDEN: Oh, I'm sure they would be because they would have a county attorney to advise them.

SENATOR CHAMBERS: At that point, but do you think they're aware of that right now?

SENATOR LOUDEN: Oh, I...yes, I do.

SENATOR CHAMBERS: What would make them aware of it?

SENATOR LOUDEN: Mostly, they read the bill.

SENATOR CHAMBERS: Okay. Then how many county's boards do you think are going to pass a resolution and enter this program, knowing that they can be sued?

SENATOR LOUDEN: Well, at the present time I've known of about seven or eight in the western end of the state, which covers quite a lot of the land when you get some of the counties out there.

SENATOR CHAMBERS: And they said they're going to enter this program?

SENATOR LOUDEN: There are some of them have passed some special resolutions of their own, trying to make local people do it. But when a county...a county can't introduce...can't make laws so they are, consequently, all they can do is have a resolution. But there are counties that have already tried to put resolutions into place to...

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SENATOR CHAMBERS: But that's to make the landowner response...

SENATOR BAKER: Time.

SENATOR CHAMBERS: Oh, thank you, Mr. President.

SENATOR BAKER: Thank you, Senator Chambers. Senator Stuthman, you're recognized to speak.

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I really wasn't going to get into the conversation, but since the discussion was between Senator Chambers about the fact of county board members being aware that they could be sued. County board members pass a resolution. That resolution, you know, is to create the management plan. The management plan would be to, you know, eradicate them or move them or whatever to do to control them. If the property owner doesn't do this, that management plan, the county, would be responsible to do it. They would be responsible to do it. They would take actions to do it. They would assess the amount of dollars that it would take to eradicate those, or move them, to the property owner. If the county management plan didn't do it, I am sure that, you know, that some individuals could possibly file suit against the county. But since they have just created a resolution, and the county can take steps to do it and assess the property owners, that can be done. So realistically, the county may get sued but they would not have a leg to stand on. They would not be assessed to any lawsuit charges. Thank you.

SENATOR BAKER: Thank you, Senator Stuthman. Senator Chambers, you're recognized to speak.

SENATOR CHAMBERS: I listened to Senator Stuthman. It was clear as mud but it covered the ground, and the confusion made me brain go around. So I grabbed a boat and I went abroad, and in Baden, Germany, I asked Sigmund Freud. He said, Son--you've heard this before--from your sad face remove the grouch, put the body upon the couch; I can see from your frustration a neurotic sublimation. Love and hate are psychosomatic. Your Rorschach shows that you're a peripatetic. I think I've probably made my

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point. This is the point...well, I'll finish it: "It all started with a broken sibling; / In the words of the famous Rudyard Kipling." What Senator Loudon...I meant what Senator Stuthman said was not in direct response to my question. He is talking about the county assessing the cost of this management to the property owner after it has been done. I would like to engage Senator Stuthman in a little exchange, if he will indulge me.

SENATOR BAKER: Senator Stuthman, would you respond?

SENATOR STUTHMAN: Yes, in a short answer.

SENATOR CHAMBERS: (Laugh) And I'll try to make the questions short. Senator Stuthman, if a county said we've got to go on this land and manage these prairie dogs, and we don't have the where...we don't have people to do this so we're going to have to hire somebody but we don't have the money to pay anybody. That's what I'm getting at. Under the law, when they pass that resolution, they shall assume the duties, and one of the duties is to go on that land and take action against those prairie dogs. So if property owner A is the complainant and property owner B, and right through J, the letter J--A, B, C, D, E, F, G, H, I, J, K--I, J, those ten individuals have established that the dogs on the adjacent property need to be managed and they want the county to do what the law said they shall do, the state law, because they voluntarily assumed that responsibility. And the county says, we cannot afford to hire anybody to do that. So these ten people, individually or collectively, sue the county. The county can be sued because there is a clear duty placed on them that's mandatory by the state law. And the court enters a mandamus action that orders the county to carry out this duty that the statute imposed on them. If they haven't got the money, what are they going to do? They can be made...can they can be made to sell some county property to get the money to comply with that court order?

SENATOR STUTHMAN: Realistically, the process that would happen, it would be adopted in the management plan, how the process would go. If the property owner did not remove them in a certain length of time, the county was responsible to move them.

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The fact that the county doesn't have any money does not enter in here because the county would hire someone to do it, assess that bill to the property owner and that would stay on that property as far as a bill, as an assessment, just like their property taxes.

SENATOR CHAMBERS: I can understand that, but who is going to go on the land to move these...to handle these prairie dogs if he or she is not going to be paid? They say...and the county says, well, we're going to assess the cost of your work against this property, and the person says, well, wait a minute, how long will it take me to get my money? Well, we have to let a certain number of years go by before we can foreclose and sell the property to get the money we owe you, so you just do it and let us owe you. Who do you think is going...you're going to get to...

SENATOR BAKER: One minute.

SENATOR CHAMBERS: ...do that work when that person cannot be paid?

SENATOR STUTHMAN: Realistically, the county would be paying the company that would eradicate or remove the prairie dogs.

SENATOR CHAMBERS: And where would they get the money? They would sell a vehicle. Right?

SENATOR STUTHMAN: The county would get the money from their reserve fund, from their cash fund. Counties all have reserves. And that would take care of that portion of it. Then that dollar amount, which was paid to the one that removed them, would be assessed to that property.

SENATOR CHAMBERS: How much is there in the cash fund usually?

SENATOR STUTHMAN: Generally, there's a certain percentage of your total budget is in the cash fund. I think it's between 4 percent and 6 percent is maintained in reserve.

SENATOR CHAMBERS: And in the average Nebraska county, not

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talking about Douglas, Sarpy and Lancaster, but in some of the western counties where these prairie dogs would be a problem, what do you think the average amount is that they would have in their reserve fund?

SENATOR BAKER: Time.

SENATOR STUTHMAN: I would say in some of those counties there, in reference to our county of Platte County, some of those counties would have \$1 million to...

SENATOR BAKER: Time.

SENATOR STUTHMAN: ...\$2 million in a reserve.

SENATOR BAKER: Thank you, Senators Chambers and Stuthman. Senator Chambers, you have spoken three times. This would be your closing.

SENATOR CHAMBERS: Thank you, Mr. President. Senator Stuthman, you say that these counties, on the average,...let's make it \$1 million. They would all have probably at least \$1 million in that fund. Do you agree?

SENATOR BAKER: Senator Stuthman, would you respond, please?

SENATOR STUTHMAN: Yes. I'm sure that...I would say all of the counties would have at least \$1 million in reserve.

SENATOR CHAMBERS: Thank you. Now I would like to ask Senator Loudon a question.

SENATOR BAKER: Senator Loudon, would you respond, please?

SENATOR LOUDON: Yes.

SENATOR CHAMBERS: Senator Loudon, why, when these counties have this money, are they trying to put the burden on the individual landowner to manage these wild animals when the counties, in fact, have the wherewithal to do the managing themselves?

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SENATOR LOUDEN: Because, according to the way the law is written, it's up to the landowner to manage the prairie dogs on their land or take care of them.

SENATOR CHAMBERS: No, I know what the law says. The law is designed to try to keep the counties from being responsible for this. They're trying to shift the responsibility to the landowner. What I'm saying is this, or asking. We eliminate this bill. The counties do have the money to pay this but they choose not to. Isn't that true?

SENATOR LOUDEN: Well, I don't think they want to dip into their reserve fund for something, for anything for that matter. They usually keep those reserve funds in case of storms or something like that that's unforeseeable catastrophes that happen to them, and that's usually what they have their reserve funds for. In the counties where I live anyway, that's what those funds are kept back for, whether a bridge gets washed out or whether they have to use it for snow removal after a blizzard or what.

SENATOR CHAMBERS: Okay. We know counties and nobody else wants to spend money which the county doesn't have to spend if they can get around it. But if prairie dogs are a serious enough problem, the counties could pay for the management themselves but they choose not to do so. Isn't that true?

SENATOR LOUDEN: Okay. At the present time in the western counties, there's, like, 15 counties or whatever there is out there, that hire the APHIS people, the USDA wildlife specialists, to control some wild animals, the coyotes, and some predators, and prairie dogs in some places. They're already doing something like that. Those counties all put up a certain amount of money into a fund so that they can have a...contract a specialist to go out there and work on some of this if they can.

SENATOR CHAMBERS: So we don't really need this bill. It's not a situation where the counties can't pay; it's a situation where they don't want to pay.

SENATOR LOUDEN: No, I wouldn't...I would disagree with that. It's a situation where you have to have some rules in place so

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that there are people that will...there is a way that they can manage them prairie dogs on places that...where the prairie dogs aren't managed; for instance, your...probably your school lands or your federal lands. And there are a few people out there in places that don't do any control on their prairie dogs, and they're encroaching on other people's property. That's the reason I said the bill is a management plan and mostly a management plan for encroachment.

SENATOR CHAMBERS: But, Senator Louden, when you offered the original version of your bill, why did the counties come in and oppose it?

SENATOR LOUDEN: Well, most of them said there wasn't enough money appropriated in the A bill to take care of hiring their specialists to do that. That was one of the complaints. And of course, that was...that appropriation money was cut down somewhat. At the present time, I think it's probably sufficient to get us by for two years, but that was one of the major complaints to start with, is they didn't think there was enough money involved to...they wanted the state or someone to pay more of the cost of hiring specialists to do...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...to work on this.

SENATOR CHAMBERS: And if the state didn't pay it, they would have paid it. Let me ask it a different way. Under the original version of your bill, would the counties have to have paid any of the cost of managing prairie dogs?

SENATOR LOUDEN: Under the original version; there wasn't any difference in the original version than what there is in this one here. That's never been changed in the bill.

SENATOR CHAMBERS: So what is changed that made them no longer oppose it? Or are they just that simple-minded?

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SENATOR LOUDEN: I guess most of them, the reason they still...several of them oppose it. The reason that opposition is less is because they've been told that if you don't want to get involved, then don't adopt the plan. There was some of the counties thought it was mandatory until it was pointed out to them that it isn't a mandatory plan; that it's optional.

SENATOR CUDABACK: Time, Senator. You've heard the closing on FA...Senator Chambers, do you want to be recognized?

SENATOR CHAMBERS: Yes. I want to withdraw that pending motion.

SENATOR CUDABACK: Okay. It is withdrawn. FA286 is withdrawn.

CLERK: Mr. President, the next amendment I have to Senator Louden's AM1587 is by Senator Chambers, FA287. (Legislative Journal page 1677.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA287.

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Probably no amendments to E & R amendments have been analyzed in this fashion, but this is a bill that deals with a subject about which I have great concern, and that is the welfare of some of nature's little creatures who cannot defend themselves, who have not offended against their own nature. Before I carry Senator Louden through a discussion of this portion, because it seems relatively clear in what it does, let's go back to the beginning, or as close to the beginning as we can. Senator Aguilar, in the beginning there was nothing, just a great void, and darkness was upon the face of the deep. And the spirit of He who does all things moved upon the waters and said...what was the first thing He said? Let there be...OPPD (inaudible) gives it to you...let there be what? Light. And there was light, and the evening and the morning were the first day. At some point during that process the earth, the sun, the moon, the stars, all the planets were thrown out there, and critters were placed on the earth. For whatever reason, they were placed on the earth. Each category of critter, they're called species now, was imbued with a nature or

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guiding principles that would determine how that critter would live and conduct its life. Scientists have determined that the driving force behind nature is the preservation and the survival of the species, not the individual. Individuals are necessary because they comprise the species, but the strong individuals are the ones that will survive so that they can reproduce. And when the strong survive and reproduce, those offspring will be strong and survive, and thereby the species will be maintained. The prairie dog was brought into existence. My research doesn't tell me, Senator Aguilar, exactly when or exactly where. But whenever and wherever that little creature came into existence, it had a nature, in the same way that the tiger, the lion, the Tyrannosaurus rex, the amoeba all have a nature. There was a unity and harmony throughout the creation and, although for some reason creatures would live at the expense of other creatures, there was some kind of apparent balance struck. Those that lived off the flesh and blood of others were able to survive because those who were the prey, in turn, hunted, caught and feasted on prey, or they lived off vegetation. And the vicious circle, as some people call it, perpetuated itself. Nobody would expect a lamb to behave like a lion. Prairie dogs have not been shown to have changed their nature from what it always has been. If they are simply doing what they always have done, why should human beings who have destroyed so much, who have polluted the rivers and the streams, who have made the air all but unbreathable in certain areas, who spend more time seeking profit than trying to create a living environment for all human beings and other creatures, have made their mark in the world by destroying everything they touch. When they see a huge stand of redwoods or other majestic trees, they don't see a wonder of nature to be appreciated. They want to see how many bulldozers, how many chain saws, how many methods they can use to cut down these trees, convert them to lumber, build houses which will need places to be built, encroach on the terrain of other animals, kill those animals for the pleasure of human beings. And they upset the ecosystem. People came into this continent, not to build a new nation, but to exterminate the original inhabitants and to decimate the native flora and fauna. Among the critters who got in the way were prairie dogs. These men wanted to introduce cattle, and sometimes cattle would step in holes where prairie dogs lived and break their legs. These men

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wanted the cattle to eat all of the vegetation and not leave any for those animals which could not turn a profit. So we wind up here today with a bill from Senator Louden who represents the terminators of this planet, and he wants to find a way to eradicate these little animals because they live in accord with their nature. They are not doing anything nature did not intend them to do. If there is a lack of harmony, it's because of what human beings have done, are doing and want to do. So my job is to restore, to a degree, the balance that people who teach some kind of design--I forget what they call it--but there's supposed to be some intelligence behind everything that exists here, but it seems to have gone on vacation when human beings enter the picture. Well, I want to inject some intelligent design and concern for one group of nature's creatures. My job is to stop Senator Louden and his terminators from killing off these little prairie dogs, and that's what all of my efforts are devoted to this evening. And in the process, I want to show that a system has been set up which flies in the face of how things of this nature ought to be done. We are dealing with wild animals. From the common law up to the present, wild animals are deemed to belong to the king or to the state. Senator Louden and his ilk want to make individual landowners responsible to carry out the responsibilities of the state, and I'm not willing to have that done, so Senator Louden and I are going to have to engage in some additional discussion. Senator Louden, I would like to ask you a question or two now, if I have some time remaining.

SENATOR CUDABACK: Senator Louden, would you respond?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Did you hear some of what I said, Senator Louden?

SENATOR LOUDEN: Well, I think so. Yeah, I was listening.

SENATOR CHAMBERS: Okay.

SENATOR LOUDEN: I...yeah, you were, you know, concerned about the environmentalists.

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SENATOR CHAMBERS: Okay. And you would agree that these prairie dogs are wild animals, and that they're not behaving in any way that goes contrary to their nature as prairie dogs. Would you agree with that?

SENATOR LOUDEN: Well, they're behaving in such a way that mother nature will probably eradicate them here one of these times. And when they do, then they would be...I mean, that's the way mother nature takes care of a species that overpopulates, is they get annihilated somehow, whether it's animals or people or whatever it is. But...

SENATOR CHAMBERS: Okay. Well, let's leave...

SENATOR LOUDEN: ...we could very easily lose a whole bunch of them. Yeah.

SENATOR CHAMBERS: Let's leave mother nature out right now, before we get to mother nature and how she controls the excess population of any set of creatures, even human beings through wars, pestilence, disease and so forth. That's how the...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...overpopulation of humans is maintained...I meant addressed by mother nature. They blame it on mother nature, but all these men are really responsible. Here's what I'm asking you. Are these prairie dogs doing anything other than what their nature directs them to do, which is to tunnel and burrow and build their little colonies? Is that in accord with a prairie dog's nature?

SENATOR LOUDEN: Well, I imagine that's all they do, yeah, eat, breed and dig.

SENATOR CHAMBERS: And that's according to their nature. Isn't that true?

SENATOR LOUDEN: True.

SENATOR CHAMBERS: All right, and you want...

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SENATOR LOUDEN: Now the difference is when people...when they have to be in around people, then you have...you probably raise some problems.

SENATOR CHAMBERS: Now the prairie dogs have not moved from where they have always been to invade urban areas. People have gone where the prairie dogs were to set up their operations. Isn't that true?

SENATOR CUDABACK: Time, Senator Chambers. You've heard the opening on FA287, offered by Senator Chambers to the Louden AM1587. Open for discussion. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I turned on my light because I knew that the Speaker wanted to talk with our senior member, and I've actually been waiting for a chance all day to talk about this story that I heard on NPR this morning. I don't know how many of you heard it, but it was pretty shocking to me. It was about a young woman in Alabama who happened to be pregnant, and she was told that she could not graduate with her high school graduation class. And so the young woman went to the graduation ceremony. And when it came time for her name to be called, which wasn't going to be called, she called her name and walked across the stage. And many of her classmates and others cheered and clapped. There's more to the story than that. The young man who impregnated her was also in that graduating class and he walked across the stage and graduated with everybody else. And it is difficult for me to believe, in this day and age, that actually happened. It actually was a private school; it wasn't a public school. There was another story that took us back to when this pregnant student actually told her counselors and school that she was pregnant. And it said that she was told by administrators that she could no longer attend classes and would have to complete her studies at home. And the young woman said, "My education is the most important thing to me. The way I receive my education shouldn't change just because I am pregnant," said Cosby, who informed the administrator's decision on March 24, and has been home schooled since that time. She said, "I've been on the honor roll pretty much through high school, and I have worked

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really hard to get to this point," she said. "I just don't want to be denied the chance to walk with my class because I'm pregnant." This was a story written a little earlier. According to the 2004-2005 St. Jude student handbook, if a student becomes pregnant, she must notify the guidance department and administration as soon as she finds out. Cosby did so at nine weeks. Principal Johnny Mitchell said Cosby is not being condemned because she's pregnant. The school has not decided whether Cosby can take part in the May 17 commencement exercises. But Mitchell said he feels she should work from home due to safety reasons. "I don't want to penalize or make any student feel ostracized because they are having a baby, but I am concerned about her safety," Mitchell said. "We at St. Jude have no reason to mistreat any young lady or gentleman. Ms. Cosby will still receive her degree." School policy states that "medical safety, physiological well-being and social issues will be taken into consideration when deciding how long a student will attend classes or extracurricular activities; if or when she needs to begin homeschooling; and when she may return to school after delivery of her child." St. Jude does not have any elevators which means students have to travel up and down stairs to get to class. Mitchell said Cosby tore her anterior cruciate ligament, or ACL, in her knee last year and had also experienced morning sickness a few times during class. Cosby, who is considering filing a discrimination lawsuit, says she, "got around just fine on crutches" after she was injured...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...and wouldn't do anything to harm herself or her baby. "I've been here for nearly four years," Cosby said, "and I don't remember any other pregnant girls being homeschooled." In a doctor's note dated March 31, 2005, Cosby's obstetrician writes that she is, quote, fine to be at school until September 1, 2005. The story goes on. I'm not going to have time to read all of it, but the upshot is that this young woman was singled out and punished for the pregnancy; the young man went on as if life were normal. And it's not fair. I thought that kind of thing had stopped, but it still happens. And this happened in Montgomery, Alabama.

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SENATOR CUDABACK: Thank you, Senator Schimek. Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, this bill is not worth all the time that was put on it, but I've invested a lot into it because I'm concerned about the direction it's going. It will require individual landowners to do the job that the county or the state ought to do. And when a landowner is told that he or she must take care of the animals, one way or the other, or have an assessment made against his or her property, that person is going to take what seems to be the cheapest way out, probably some kind of poison. It may not be effective, but it may leach into the soil. It may poison animals other than prairie dogs. It may poison some prairie dogs who will leave their burrows and go someplace else, be consumed by another animal, which animal will die. This is a blueprint for very bad things. It is irresponsible state policy. It is an attempt by the counties to shift onto the individual landowner a responsibility that is the state's or the county's. No person can anymore determine that these prairie dogs are going to stay confined to a piece of land than these people who have hog operations are required to confine the stench and the flies and the other things to their property. They cannot, and they're not required to do that. They say they take what steps they can, but everybody knows that the quality of life is hindered and diminished greatly when these operations come near to where people live. So when people decide on a vote that's going to be taken that they're going to keep this thing alive, I feel so strongly about what I'm doing that I have to make sure we don't get to this bill again. That means I've got to find a way, for the next eight days, to take time on every bill that comes before us. This bill should not have come this far. You all gave Senator Loudon a cloture vote, and I did not do everything I could to stop us from getting to it again. To be quite frank, I didn't know that we would get to it again, but I've learned my lesson. I won't be bitten twice the same way during the same session. If you all think this bill is as important as some people want to say...and there are some counties that don't like it. They don't want to be put in a position where they can be sued and compelled to go into their reserve funds to carry out the duties and responsibilities that

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they have not seriously considered. And if no counties decide to pass the resolutions, what is all this work for? It's one of those feel-good pieces of legislation which will accomplish nothing, but it can certainly eat into the rest of our session. And because of the way some things have gone, I'm in the mood to do whatever I have to do for the rest of the session. I will take us this late every night. So check tomorrow's agenda and see if I'm bluffing. I don't want these animals treated in the way they will be under this bill. I don't want individual landowners going out there, who know no more about how to manage these animals than I do, taking any and every kind of action to avoid having his or her property assessed an amount that the county can put on it after the county has sent somebody out there who might bungle and stumble around and not get the job done. So the county goes through this action. The person says, I'm not going to pay you. So the animals don't completely...they're not completely eradicated.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: They become the subject of another complaint. The county goes out again. There's another bungled job, another assessment. This bill is crazy, but you can have it your way. Senator Loudon has been promised that he would get a chance to invoke cloture. I hope you either vote no or don't vote at all. There is no demand for this bill. The only letters and e-mails I've gotten--and they're not sent to me directly, they're sent to other people who will ask them to see that I get them because I don't have e-mail; or they will send it by fax--are in opposition to this bill. I have been given all kinds of publications that I didn't even read from on the floor, a very interesting one called Great Plains Research. They are scholarly works on the value of prairie dogs to the ecosystem.

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: There are no further lights on, Senator Chambers. Did you wish to close?

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SENATOR CHAMBERS: Yes, I do. Members of the Legislature, you all have heard the little story of the lady and the tiger, and I'm not going to tell the whole store, but it wound up with a person being presented with two doors, and the person could only open one of them. Behind one was a lady, behind the other was a tiger. So that's the way life is often. You're going to open a door; which will you get, the lady or the tiger? You all are in a position to make that determination. You can give him 33 votes and we'll just see what happens. If he doesn't get his 33 votes, the discussion that he and I have had makes it clear that there is no crisis, there is no catastrophe. The counties don't want to pay the money to do this. There is no outcry for it. When the counties thought they might have to pay something, they came down here and opposed it. So it's obvious there is not that serious a problem. But it's a very serious issue to me. Mr. President, I will withdraw that pending motion.

SENATOR CUDABACK: It is withdrawn, FA287, that is. Mr. Clerk, please.

CLERK: Mr. President, the next motion I have is by Senator Chambers; FA288, Senator. (Legislative Journal page 1677.)

SENATOR CUDABACK: Senator Chambers, you're recognized to open on FA288.

SENATOR CHAMBERS: Thank you, Mr. President. I was under the understanding that a vote is going to be...that Senator Louden is going to invoke cloture. I'd like to ask Senator Louden a question.

SENATOR CUDABACK: Senator Louden, would you reply to a question of Senator Chambers?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Senator Louden, is it your intention to invoke cloture, or attempt to?

SENATOR LOUDEN: Well, it's considered.

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SENATOR CHAMBERS: Well, are you going to do it?

SENATOR LOUDEN: Well, I'm...okay, to be honest about you, yeah, we're looking around here to see if we got the votes or whatever.

SENATOR CHAMBERS: Well, you and I...

SENATOR LOUDEN: I mean, it looks like the way you've worked with this thing, I suppose this is the only alternative that's probably left. Right?

SENATOR CHAMBERS: Well, I know I'm going to keep us here till the cows come home. (Laughter)

SENATOR LOUDEN: I thought maybe till the prairie dogs come home. Go ahead.

SENATOR CHAMBERS: Okay. So are you going to invoke cloture, yes or no?

SENATOR LOUDEN: I haven't decided yet, but I'll probably decide in the next few minutes.

SENATOR CHAMBERS: Then I'm going to keep rolling right along, and I'm going to now talk about the process. This bill is not high on anybody's priority list. It shouldn't even be here. You all gave him a cloture vote as a favor or to teach me a lesson, a lesson which I did not learn. But I did not resort to what I could have as a result of that vote. But this time, with only nine days left in the session, or however many there are, I believe I can control the rest of the session. And if there are bills that some of you all have been negotiating on, give him 33 votes and forget those negotiations. And forget those bills that meant something to you. You know why I'm saying this? Because what I'm fighting against means something to me. And it's obvious that what I'm fighting to protect, namely these little animals, is more important to me than the things you all are interested in because you won't put forth the time or the effort. But we'll just have to find out what's going to happen here. Now I've been given to believe that there is to be a

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certain action, and it's not taking place, so I'm left up in the air. I think somebody has to be forced to make a decision. Now I shouldn't have been told that that decision is pending if it's not going to be forthcoming. So I'm going to presume that that motion is not going to be made, and I'm going to take us till 7:30, at which time I've been told we will adjourn. So that's what I'm going to do because that's what my intention was. I will proceed in the way that I had been going. When I look at the E & R amendments which have become the bill, if you get to a definitional section, there has been a change to improve the definition of colony. There was another one that I wanted to get to after I had gone through Senator Louden's amendments to the E & R amendments. Maybe what I was looking for has been removed, but at any rate, I will go back to his amendments. Senator Louden, we're at number 4 now, so if you would turn to page 4 of the E & R amendment, I would like to move through what you have offered to see if I understand what you're doing. Have you got page 4?

SENATOR CUDABACK: Senator Louden.

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Okay.

SENATOR LOUDEN: Page 4 on my amendment?

SENATOR CHAMBERS: Yes, your amendment to the E & R amendments.

SENATOR LOUDEN: Okay.

SENATOR CHAMBERS: Now, on page...on line 16 of page 1 of your amendment, we're going to talk about amendments you want to make to page 4 of the E & R amendments. Are you with me on that?

SENATOR LOUDEN: Okay.

SENATOR CHAMBERS: What your amendment says on page 4, line 1, after "expanded"...are you with me?

SENATOR LOUDEN: Yeah.

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SENATOR CHAMBERS: You would insert "from property of one owner in the county," then would continue "onto adjacent property" and so forth. That's all that that does, is to add clarifying language. Would you agree?

SENATOR LOUDEN: Right.

SENATOR CHAMBERS: I'd like to ask you a question. Have you filed your motion for cloture?

SENATOR LOUDEN: Yes.

SENATOR CHAMBERS: Mr. President, I have no more to say at this time. Thank you.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Thank you, Senator Chambers. Mr. Clerk.

CLERK: Mr. President, I have a priority motion. Senator Louden would move to invoke cloture pursuant to Rule 7, Section 10.

SPEAKER BRASHEAR: Senator Louden, for what purpose do you rise?

SENATOR LOUDEN: To ask for cloture. Is that...and to have a call of the house, I suppose.

SPEAKER BRASHEAR: There's been a request for a call of the house. All those in favor signify by saying aye...by voting aye; and those opposed, nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, to place the house under call.

SPEAKER BRASHEAR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. The house is under call. Senators...unexcused senators please report to the Chamber. The house is under call.

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Senators Engel and Cornett, please report to the Chamber. Members all being present or otherwise accounted for, the first vote is the motion to invoke cloture. All those in favor vote...no, we have a request for a roll call vote in reverse order. Mr. Clerk.

CLERK: (Roll call vote taken, Legislative Journal pages 1677-1678.) 32 ayes, 3 nays, Mr. President, on the motion to invoke cloture.

SPEAKER BRASHEAR: Cloture is not invoked. Pursuant to the rules, the legislative bill will be removed from the agenda for the day. Mr. Clerk.

CLERK: Mr. President, I have but one item at this point, and that is an amendment by Senator Raikes to LB 126 to be printed; and an amendment to LB 40 by Senator Redfield, and LB 114 by Senator Byars. (Legislative Journal pages 1678-1679.)

Mr. President, I have a priority motion, that motion be that Senator Fischer move to adjourn until Friday morning at 9:00 a.m.

SPEAKER BRASHEAR: You've heard the motion. Did I hear a request for a board vote? Will the senator requesting a board vote please identify himself or herself?

SENATOR FRIEND: Mike Friend.

SPEAKER BRASHEAR: Senator Friend. (Laughter) We know you. Thank you.

SENATOR FRIEND: You're welcome.

SPEAKER BRASHEAR: The motion is to adjourn. All those in favor signify by voting aye; those opposed, nay. Have you all voted? Record, Mr. Clerk.

CLERK: 16 ayes, 15 nays, Mr. President, to adjourn.

SPEAKER BRASHEAR: We are adjourned. Thank you. We are

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adjourned.

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